United States Court of Appeals
for the Second Circuit

APPENDIX

77-7037

B

In The

United States Court of Appeals

For The Second Circuit

◆

NATIONAL AUTO BROKERS CORP., et al.,
Plaintiffs-Appellants,

-against-

GENERAL MOTORS CORPORATION, et al.,
Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of New York.

UNITED STATES COURT OF APPEALS
FILED
AUG 8 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX - VOLUME 7

CARL E. PERSON
Attorney for Plaintiffs-Appellants
132 Nassau Street
New York, New York 10038

PAUL, WEISS, RIFKIND,
WHARTON & GARRISON
Attorneys for Defendants-Appellees James M. Roche, Frederic G. Donner, General Motors Corp. and General Motors Acceptance Corp.
345 Park Avenue
New York, New York 10022

HETZELT, WATSON, McGARVEY & HETZELT
Attorneys for Defendants-Appellees Hamister-Gillogly Chevrolet, Inc. and Niagara Frontier Automobile Dealers Association, Inc.
1904 Liberty Bank Building
Buffalo, New York 14202

JOSEPH C. TISDALL
Attorney for Defendant-Appellee Bob Bain Chevrolet
300 Statler Office Building
Buffalo, New York 14202

BRENNAN, CALLAHAN, TESSEYMAN,
ZELMAN, RUNFOLA & NOBLE
Attorneys for Defendant-Appellee Paul Batt Buick, Inc.
1360 Statler Hilton Hotel
Buffalo, New York 14202

SIDNEY A. WEISBERG
Attorney for Defendant-Appellee Paragon Oldsmobile, Inc.
225 Broadway
New York, New York 10007

BORINS & SNITZER
Attorneys for Defendant-Appellee Glen Campbell Chev., Inc.
1718 Statler Hilton Hotel
Buffalo, New York 14202

PAGINATION AS IN ORIGINAL COPY

Halstead -- from Halstead in its original inception when Hennessey talked to Halstead that I was an associate and that I would like to get some automobiles, and Halstead actually turned the writing of orders on this over to O'Donnell, who, as you will notice, was paid a commission for it.

Q Where do I notice it?

A Up at the top, where it says "Commission paid."

Q You are talking of the group of invoices?

A Yes.

Q Let's turn to page 2 so we are talking about the same group. Just the second page from the top, does it show a commission?

A Yes.

Q That little handwritten --

A $15, and here --

Q Some of it is $10?

A Yes. I suppose it would depend --

Q You are saying that is, to your knowledge, a commission to Jim O'Donnell?

A He's the selling salesman, yes.

Q So we are looking at the same thing, you look at the second page from the top. You'll see a figure of $10.

A Yes.

Q That's in handwriting?

A Yes.

Q It's your understanding that that was a commission to Jim O'Donnell?

A That's very typical the way dealers show commissions.

Q I started by asking you to give me the conversation or conversations wherein it was determined that General would be the party invoiced. I thought you were going to give me that.

A Mr. O'Donnell was aware of our Nabcor situation. Mr. Hennessey was aware of the problems we were having with cars, so between Mr. Halstead, who turned us over to Mr. O'Donnell to write these orders, they set it up to bill me for whatever cars I needed.

Q I asked you about conversations.

You told me that when you first made the orders to Jim O'Donnell you said these were for Econo-Car. Do you recall telling me that?

A Specifically the way --

Q Was that correct or not correct?

A It was not exactly in that phraseology.

Q What phraseology was it in?

A I'm trying to think. It was something like this: "This an Econo-Car deal," or something like that.

T5

Q You said that when you first --

A When I made the order for those cars, right.

Q When do I understand there was a subsequent conversation about billing?

A At the time the car wouldbe billed.

Q All right.

A In other words, the time --

Q Let me take it this way: you have said that in each dase the original order to O'Donnell was in terms of Econo-Car, right?

A Originally, yes.

Q Now, you tell me in each case how it came about. You know and I don't, so you tell me how it came about that subsequently the billing was to General.

A Because at the time when we were called that the car had arrived for a pick-up date, I told them who to make the billing to, it was very simple.

Q Do you remember what you said?

A I said, "Bill this to General Auto."

Q Were there instances where some of the cars were obtained immediately through the locator, can you tell?

A I think, your Honor, the only way we could really find this out is if we got the records that Carl was looking for when the cars were originally ordered and the time element.

MR. PERSON: These records apparently don't reflect -- they appear to reflect it comes out of inventory,if you see the X in the second column, the upper quarter, righthand quarter of each of these pages. It looks like it is supposedly coming out of inventory, that those cars were ordered specifically in many cases for General from Clements-Gillogly.

THE COURT: What does that mean, they were on hand?

MR.PERSON: They weren't in many cases, they were ordered. That is the import of the testimony of the witness, but the Clements-Gillogly did not produce those documents relating to orders, and I think those documents could very well reflect Econo-Car.

THE COURT: We will take a short recess now.

(Recess.)

THE COURT: I have no further questions. Anyone else have questions?

MR. KAPLAN: Yes, your Honor.

RECROSS EXAMINATION

BY MR. KAPLAN:

Q Mr. Strimple, the very first time that you mentioned Econo-Car to Gillogly Chevrolet, you stated that took place in 1968, true?

A Yes, I think the negotiations started in 1968, yes.

Q Prior to that time you heard about the English episode, true?

A About the same period of time, yes. Very shortly before.

Q The English episode took place before you mentioned Econo-Car?

A True.

Q After the English episode I think we established yesterday there was a phone call from Halstead in which he said he couldn't help you on some orders, true?

A Originally when I first started, yes.

Q Between the time Halstead said he couldn't help you on those orders and the time you went back and introduced yourself as Econo-Car, did you have any contact at all with Gillogly Chevrolet?

A I really don't remember.

Q Did you try to order cars from Halstead without mentioning Econo-Car after he said no to you following the English episode?

A It is possible that I did. I don't recall specifically.

Q Isn't it a fact that the first contact you had with Gillogly Chevrolet after the phone call where Halstead said he couldn't help you on those orders there was another phone call a few months later in which you ordered some cars from Mr. Halstead?

A I am not sure, Mr. Kaplan.

Q Let me read to you from your deposition, sir.

A Thank you.

Q Page 154, and this follows immediately after the testimony about the telephone call where the witness claims that Halstead said he couldn't help him on five or six orders.

"Q Now, after the phone call from Halstead, the next time you had any communication with anyone from Clements-Gillogly was quite a few months later, I think you said?

"A Right."

Skipping a line where the witness didn't respond:

"Q Let me ask first, that would have been in 1968, would it not, the next communication?

"A It might have been in 1969.

"Q So it could have been even more than a year later?

"A Right.

"Q Well, did you call somebody there or go in or did somebody there call you or what?

"A No. I called up and was -- I was trying to get a car.

"Q Whom did you call?

"A Halstead.

"Q What did you say to Halstead and what did he say to you this time?

"A I just told him I wanted to put in an order for a car.

"Q One car?

"A I don't know if it was one or two.

"Q No more than two, though?

"A No.

"Q Did you tell him anything else?

"A No."

You gave that testimony, sir?

A Yes, but I think I was getting confused in your dates that you are talking about.

Q Mr. Strimple, putting the dates aside, you testified previously, sir, that after Halstead said he couldn't help you, the next time you had any contact with Halstead or Gillogly, you called Halstead and ordered some cars and nothing was said about Econo-Car; isn't that true?

A I don't remember.

MR. KAPLAN: Mr. Person, do you dispute the witness so testified?

THE COURT: It is in the record. He is not denying he testified that way in the deposition.

I would like to get, if you would reread, please, Mr. Kaplan, the part about the next contact.

MR. KAPLAN: Certainly.

(Record reread.)

MR. KAPLAN: In fact, I will go on a little bit further, your Honor:

"Q Did you tell him you wanted to pay fleet price?

"A Yes.

"Q Did you tell him anything else about fleet?

"A No.

"Q What did Halstead say?

"A He ordered the cars.

"Q He told you he would order the cars?

"A Yes.

"Q Is that right?

"A Yes.

"Q Did you ever get those cars?

"A Yes.

"Q Did Halstead tell you anything apart from that he was going to order the cars?

"A No."

THE COURT: Anything else?

MR. KAPLAN: Yes, a little bit more.

BY MR. KAPLAN:

Q Mr. Strimple, I take it that your arrangement with Econo-Car was one pursuant to which you found people who wanted to lease cars, true?

A True.

Q You would arrange for those people to lease cars from Econo-Car, true?

A True.

Q Econo-Car paid you a commission for getting those leases, true?

A True.

Q Mr. Strimple, Econo-Car did not buy cars purportedly for its leasing business and then permit General Auto Sales to sell, true?

A Will you repeat that, please?

MR. KAPLAN: Mr. Reporter,please.

(Question read.)

MR. PERSON: I had something that should have been read that was not.

THE COURT: You wait just a minute, Mr. Kaplan is asking questions.

A I don't really -- that question is confusing to me.

THE COURT: Why?

THE WITNESS: Well, Econo-Car was permitting me to order cars in Econo-Car's name and billed out, being billed out to me.

THE COURT: To whom?

THE WITNESS: Actually they were billing out to General, but you can take and designate that your dealer bill out cars to anyone. Once you establish your source of supply your dealer will bill them to anyone.

THE COURT: Don't have them bill them to me.

THE WITNESS: If you want to pay for it.

Q But the arrangement was not that Econo-Car would order cars and then let you sell them, was it?

A No, I would do the ordering, right.

2

Q You were ordering them for you, you weren't acting for Econo-Car?

A I ordered for both of us.

Q But the ones on Plaintiff's Exhibit 531 were all billed for you because they were ordered for you, true?

A I believe they were, yes.

Q I am sorry?

THE COURT: He said "Yes."

THE WITNESS: He said "Yes."

THE COURT: You mean General, right?

MR. KAPLAN: Correct.

THE COURT: Is that right, General?

THE WITNESS: General Auto, right.

Q Now, sir, you said that Mr. O'Donnell was aware of what happened with you and Nabcor, true?

A Yes.

Q There came a time when you ordered cars and told him you say they were for Econo-Car, true?

A There was a time that I -- right.

Q Then following that you told Mr. O'Donnell to make out the invoices to General Auto Sales?

A At the time of delivery, I mean when they notified me that the car was ready to pick up, they would ask me who I wanted it billed to.

Q They would ask you more than that, they would ask you who you wanted it invoiced to, correct?

A That is what I mean by billing.

Q This invoice or these invoices, Plaintiff's Exhibit 531, this is what the fellow who bought the car would use to register it at the Motor Vehicle Bureau, true?

A No, that is not what they used to register the car.

Q Isn't the bill of sale taken down --

A That is the serial number that is used to register.

Q In any event, you told Mr. O'Donnell to make the invoice to General Auto?

A True.

Q And he knew all about you and Nabcor, true?

A Would you repeat that?

Q He knew all about you and Nabcor, true?

A You are assuming all about Nabcor. I don't know much he knew.

Q Didn't you say in response to the Judge's question a few minutes ago that O'Donnell was aware of what happened with you and Nabcor?

A As far as being able to get cars from Clements-Gillogly. I don't know if he knew all about the other stuff.

Q But he knew about you and Nabcor and Clements-Gillogly?

A Yes.

Q And you asked him to make out invoices to General Auto Sales?

A Yes.

Q And he did?

A Yes.

Q And they kept selling you cars from this point onward?

A Yes.

Q Never again refused to sell you a car?

A That is true.

Q Then you asked them to get a fleet allowance from General Motors for you, true?

A Yes.

MR. KAPLAN: Your Honor, Exhibit FF from yesterday showsthey wrote to General Motors and told these cars to General Auto Sales.

THE COURT: I have that.

Is it in the record you ultimately got a check for $250 as a fleet allowance, is that right?

THE WITNESS: See, the dealer can designate -- I think what happened here, your Honor. they called Econo-Car.

THE COURT: Look --

THE WITNESS: Asking me to be paid the rebate because they were General purchases, not Econo-Cars.

THE COURT: You are saying that Econo-Car said to give the fleet rebate to you, General, is that how you said that?

THE WITNESS: According to the way this reads, that is the way it looks.

Can I have that, your Honor?

MR. KAPLAN: Maybe this will help --

THE WITNESS: This credit to the dealer --

THE COURT: Looking at Exhibit JJ, credit to dealer, X in a box that says "Credit to Dealer."

Then there is a column that has General Auto Sales & Leasing Company listed five times, right?

THE WITNESS: Right.

THE COURT: I just wanted to ask you really, did you receive a check from General Motops for $250?

THE WITNESS: Yes.

THE COURT: "You" being General, right?

THE WITNESS: Right.

BY MR. KAPLAN:

Q Mr. Strimple, you mentioned subterfuge. Who were you fooling when you told Mr. O'Donnell to make the invoices out to General Auto Sales?

A The factory.

Q And were you fooling the factory when you gave Clements-Gillogly the serial numbers of the cars that you bought so they could write a letter to the factory to get you a fleet allowance, Exhibit FF in evidence, which says the cars were sold to General Auto Sales?

A They weren't sold to Nabcor as such. I was trying very hard to establish General as a legitimate leasing company, so that I could do like Hirsch and Avis and other people that bought cars, and Econo-Car.

Q Mr. Strimple, the fact that General Auto Sales was connected with Narcor was not something you kept secret, was it, sir?

A Not originally, but after all the static I did.

Q It wasn't a secret when this conversation you heard about between Bolling and Gillogly Chevrolet took place, true?

A That was the original start, right.

Q This was before you said anything to Mr. O'Donnell about Econo-Car or bill it to General Auto Sales, true?

A Yes, I didn't have any conversation with Mr. O'Donnell originally.

Q Let me read to you from an affidavit you filed in this action in opposition to a motion for summary judgment by Paul Batt Buick, paragraph No. 2:

"Mr. Batt said in his affidavit, paragraph 2, that until the commencement of this action he was not aware that General was a franchisee of plaintiff National Auto Brokers Corporation. The inference is, of course, that Mr. Batt's action towards General would not therefore have been part of any anti-Nabcor conspiracy.

"In fact, Mr. Batt was well aware at all times that General was a Nabcor franchisee. My place of business was 5247 Broadway, Lancaster, New York, near Buffalo.

"Batt Buick's place of business was 5175 Broadway in Lancaster. In General's place of business in a shop on the street floor facing the street, was a lighted electric clock with the words 'Nabcor System.' The place of business of General and Batt Buick were in

Automobile Row, the subject of automobile brokers was a hot one at the time. No one in the row could have been unaware that General was a broker."

Now, sir, how far as 5247 Broadway from Lancaster from Gillogly Chevrolet at the time of these events?

A I would say four or five miles.

Q You gave your address to Gillogly Chevrolet when you had them invoice these cars to you, true?

A That is true.

Q Your connection with Nabcor was no secret when this happened, was it?

A The Buffalo Dealers Association Bulletin announced it to everybody. They all knew it.

Q Isn't it a fact that there was never any subterfuge employed in getting cars from Gillogly Chevrolet?

A Not after I established my source of supply. I didn't have to.

Q At any time?

A No. There was definitely subterfute.

Q Let me read to you from your deposition at 272:

"Q Did General Auto Sales ever order new cars in Econo-Car's name for sale to General Auto Sales' customers?

"A Not without the -- either being aware of what the car was doing -- if I had to work the subterfuge saying it was for Econo-Car for his own purposes, that I don't know.

"Q That suggests that it happened, Mr. Strimple.

"A What?

"Q That suggests that it happened.

"A Well, I think it did in a case or two, strictly with a Cadillac dealer, but I'm not."

Over on 273, after asking whether he had done it with a couple of different dealers:

"Q Any others?

"A I'm not sure whether Clements-Gillogly did or not.

"Q Any others?

"A Not that I can think of offhand."

You said that, sir?

A I don't know yet whether Clements themselves knew --

Q You gave that testimony, true?

A I believe I did.

Q It was true, was it not?

A That I gave the testimony, yes.

Q And the testimony was true, correct?

A Yes. I don't know whether he knew it.

THE COURT: Was he asked at his deposition?

I was not aware yesterday that his deposition had anything in it about Econo-Car. Not that I had to be aware, but now something comes up in a deposition about Econo-Car and I don't fully understand whether it is consistent or inconsistent with what he has testified to here because that little portion -- there must be more to it than that.

MR. KAPLAN: Frankly, I think the

deposition is interminably inconsistent.

THE COURT: Regardless of that, is there anything more you can read to put this in context?

MR. PERSON: May I add at this point that there are some matters on Econo-Car that Mr. Kaplan skipped over when he was reading the deposition before, page 149. There is information on Econo-Car immediately after Mr. Kaplan stopped with the reading, which I think --

THE COURT: Let's get it all.

MR. PERSON: On to 158.

THE COURT: You read that to me.

MR. PERSON: "A I know particular periods of time, I think it was some time in 1969 where I started to get leases for Econo-Car. In other words, I would go out and sell the car, the lease, for Econo-Car Leasing.

"Q I see. Let's see if I understand that. You were acting for Econo-Car and finding customers to take leased cars from them?

"A Right.

"Q And this was in addition to your Nabcor business?

"A Right.

"Q Okay.

"Now, when after you ordered one or two cars from Holstead did you at General Auto Sales talk to anybody at Clements?

"A We talked to them quite regularly because were handling a lot of new cars for them for Econo-Car on lease."

THE COURT: Anything else?

MR. KAPLAN: I have a further question or two.

THE COURT: How much do you want to read, Mr. Person?

MR. PERSON: It continues at 159:

"Q Well, let me put it another way. Did you ever again, after you ordered the one or two cars in '68 or '69, order any cars for Nabcor or for your Nabcor business from Clements-Gillogly?

"A Yes. There was several cars that were gotten from Clements for Nabcor business.

"Q Did they ever after the first instance refuse to sell you any cars?

"A No. After the latter part of '69, or something like this, they sort of eased off on all of this getting cars. Of course with me being, handling, quite a few cars for leases, Clements never gave me any more trouble?

"Q So you got cars from Clements-Gillogly for Nabcor for sale through Nabcor or through you as a Nabcor broker?

"A Yes.

"Q After '69?

"A Right.

"Q So as I understand it, and I want you to correct me if I am not correct here in every respect, you ordered five or six cars in '67 from Clemeents-Gillogly through Holstead and a few days later Bolling met English there and they had the conversation you told us about, and then Holstead called you and said that he could not help you and if you wanted to you could talk to Wolmack, and then you didn't have any conversation with them for a few months or a year, is that right?

"A We were trying quite a few different dealers in the interim period.

"Q But you didn't talk to Clements-Gillogly?

"A No, I was not talking to Clements this particular period of time.

"Q And then you called Holstead again and ordered one or two cars and got them?

"A Right."

I'm trying to see how far I have to read on this.

MR. KAPLAN: Your Honor, the chronology there is completely inconsistent with the exhibit.

THE COURT: Just a minute. Let's not argue.

[redacted] PERSON: "Q After you placed that order did you get all the cars you ordered from Clements-Gillogly?

"A Yes. Every time thereafter that I ordered a car from Clements I got it.

"Q Now, did anybody at Clements-Gillogly ever tell you that General Motors had ever told them not to sell cars to you?"

MR. KAPLAN: I object to this.

THE COURT: This is beyond what you have a right to read.

MR. KAPLAN: It has nothing to do with Econo-Car, your Honor.

If I may, I will finish up briefly.

THE COURT: Does Mr. Person have anything else?

MR. PERSON: Nothing.

THE COURT: Mr. Kaplan?

MR. KAPLAN: The notion that this resumption of dealings, if I can make the point --

THE COURT: I have that.

I thought you were goign to read something. Do you have anything else?

MR. KAPLAN: No.

THE COURT: Read back to me the part you read earlier about the subterfuge.

MR. KAPLAN: There are two separate pages. The first is at 266:

"Q Am I correct in understanding that what happened is that Econo-Car would buy new cars purportedly for their leasing operations and then permit you as General Auto Sales to dispose of them as new to the retail trade, is that what the arrangement was?

"A No. Econo-Car would take and handle any leases that we run into and pay General Auto per se for getting the lease, and since we were not able to get them, this business on our own, you figure rather than lose the business, well, you would work it in that respect."

The second is 272:

"Q Did General Auto Sales ever order new cars in Econo-Car's name for sale to General Auto Sales' customers?

"A Not without the -- either being aware of what the car was doing -- if we had to work a subterfuge saying it was for Econo-Car for his own purposes, that I don't know.

"Q That suggests that it happened, Mr. Strim Strimple.

"A What?

"Q That suggests that it happened.

"A Well, I think that it did in a case or two, strictly with the Cadillac dealer, but I'm not --

"Q Who was the Cadillac dealer?

"A Kaiser Cadillac.

"Q How many cars did General Auto Sales buy from Kaiser Cadillac?

"A I would say somewhere around half a dozen.

"Q Any other dealers besides Kaiser Cadillac?

"A That General Auto bought cars from?

"Q That General Auto Sales got cars from in the name of Econo-Car or invoiced to Econo-Car for sale to the public.

"A I think Jack Stevens Buick was one.

"Q Any others?

"A Maybe Ben Chevrolet.

"Q Any others?

"A I'm not sure whether Clements-Gillogly did or not.

"Q Any others?

"A Not that I can think of offhand that -- and one of the sales managers at Clements told me that the manufacturer was putting the heat on for car sales and was working on a way to get us cars."

BY MR. KAPLAN:

Q In fact, you did not become connected with Econo-Car until 1969; true?

A No. You got confused in your dates, and since I got the thing from the Justice Department substantiating the time I went to the United States attorney, I can start talking about, clearly, the time element that I was not able to pick up exactly in this interim period of time.

Q Mr. Strimple, did you last night, after we finished court and before you got on the stand this morning, discuss the time interval involved here with anyone?

A Did I discuss --

Q Did you discuss the timing of these events, most particularly your connection with Econo-Car, with anyone between the time court adjourned last night and now?

A I discussed wholeheartedly this time element with the Justice Department.

THE COURT: Listen to the question. Mr. Kaplan is asking you about discussions last night after court closed.

A With anyone? Yes, I did.

Q With whom?

A I discussed it with Carl.

THE COURT: Mr. Person?

THE WITNESS: Yes.

Q With anyone else?

A Yes. I discussed it with Mr. Bolling, who was present.

Q Anyone else?

A Anyone of Mr. Person's staff could have been around.

Q Was Anthony Maiorana there at that time?

A Yes.

Q You spoke to him about it?

A Yes.

Q Did you speak last night by telephone or otherwise with Frank Maiorana?

A Yes.

Q You and Mr. Maiorana have had discussions prior to the commencement of this lawsuit about bringing this lawsuit?

A Yes.

Q Before you testified at the grand jury in Buffalo you discussed your testimony with Frank Maiorana, true or false?

A I believe so.

Q Isn't it a fact, sir, that your connection with Econo-Car did not take place before 1969?

A I do not believe that, no. I was working toward making a connection and actually some of the things that were involved here caused me to go to the Attorney General's office and I was trying to clarify dates that happened, seven, eight, nine years ago.

Q Mr. Strimple, yesterday I read to you and to the court a portion of your interrogatory answer in which you made the statement:

"In 1969-1970 plaintiff leased a number of Econo-Car vehicles. However, such leasing had no relationship to the Nabcor System or this action."

You swore to the truth of that interrogatory, according to the record, on April 1, 1972.

A Reread that, Mr. Kaplan.

Q The statement in your interrogatory answers:

"In 1969 and 1970 plaintiff leased a number of Econo-Car vehicles. However, such leasing had no relationship to the Nabcor System or this action."

Do you recall that?

A Actually I was not associating myself as Nabcor at this thing. I was General Auto.

Q The only issue right now is the fact that you swore to the truth of that answer on April 1, 1972. Is there any dispute of that?

THE COURT: If it is in the interrogatory it is there.

The reporter has an error on page 171. The dates are transcribed as 2969 and 2970. I think it is perfectly clear it is 1969 and 1970.

Q The record also reflects that the interrogatories to which that was a response are dated June 11, 1971. You had nine months to consider when your relationship to Econo-Car started between the time you were asked and the time you answered; true:

A Yes. I guess I did.

Q Let me read to you from your deposition at page 263.

THE COURT: What's the date of the deposition?

MR. KAPLAN: June 26, 1975.

THE COURT: The first session of the deposition and the last --

MR. KAPLAN: It commenced on April 2, 1973. The last was October 17, 1975.

The session from which I am about to read was June 26, 1975:

"Q When did you first become connected with Econo-Car?

"A I think it was some time around '69, '70, some place in there."

You gave that testimony, sir?

A Yes. I told you I was confused with the timing.

Q On September 23, 1976 you reread this deposition and you signed an affidavit stating "To the best of my recollection, these depositions are correct"; true?

THE COURT: If it is there, it is there.

What's the date?

MR. KAPLAN: September 26, 1976. If we may, I would like to have this marked as an exhibit.

May this be marked for identification as Defendants' Exhibit IIII.

(Defendants' Exhibit IIII was marked for identification.)

xx MR. KAPLAN: Off the record.

(Discussion off the record.)

THE COURT: You are offering this in evidence?

MR. KAPLAN: Yes.

THE COURT: Any objection?

MR. PERSON: This was signed just recently. The witness has not testified as to when he actually read the transcripts. There is an assumption --

THE COURT: I'll receive it.

(Defendants' Exhibit IIII was received in evidence.)

xx BY MR. KAPLAN:

Q When did you review the deposition before signing Defendants' Exhibit IIII?

A About September 22nd.

Q 1976?

A I got a call from him --

Q 1976.

A Very recently, yes.

MR. KAPLAN: The record will reflect no correction of his date of connection with Econo-Car.

No further questions.

THE COURT: Do you have anything, Mr. Person?

REDIRECT EXAMINATION

BY MR. PERSON:

Q Are you able to recall when you first submitted orders to Econo-Car for leases?

THE COURT: Mr. Person, we have had so much on this subject that a new formula confuses me.

I don't know whether that was the procedure. So, if you want to go into detail, at lease have it clear that this is what happened.

Q Did you solicit leases for Econo-Car?

A Yes, I did.

Q When you made a sale did you submit a proposed transaction to Econo-Car for their approval?

A Yes, I did.

Q Do you recall the first time at which you submitted a proposed transaction to Econo-Car for their approval?

A I believe it was somewhere around July of '68.

Q Prior to that time, in July of '68, had Mr. Hennessey introduced you to various dealers?

A He had introduced me to Mr. Holstead?

Q How many months prior?

A As a business associate.

Q How many months prior?

A Some time close to the beginning of the year.

Q How soon after your first introduction by Mr. Hennessey did you start using the name Econo-Car in your own transactions involving General?

A I threw it around as much as possible.

Q When? Starting when?

A As soon as Hennessey introduced me.

MR. PERSON: No further questions.

THE COURT: I think we have had enough.

That's all the questions for you, Mr. Strimple. You may step down.

MR. KAPLAN: I do have one.

THE COURT: All right, one.

RECROSS EXAMINATION

BY MR. KAPLAN:

Q Under Mr. Person's first examination, Mr. Strimple, you said that when you met Hennessey you explained your problems getting cars; is that true?

A Yes. I explained to him.

Q Now you say that Hennessey first introduced you to Holstead before July of '68; true?

A Yes.

MR. KAPLAN: That's all.

THE COURT: You may step down.

(Witness excused.)

THE COURT: I take it the next witness

MR. PERSON: Anthony Maiorana, your Honor.

ANTHONY MAIORANA, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

MR. KAPLAN: Two preliminary matters. First, the subpoenas served on Nabcor, I believe there is no objection, but I would like the materials before the witness begins to testify.

Secondly, I am not objecting at this point, but I would like the record to note the presence of Frank Maiorana during his brother's testimony.

THE COURT: All right.

MR. PERSON: I have some, but not all of the documents called for by the subpoenas. One subpoena I have all the documents here. The subpoena dated September 20, all the books and things referred to in that are in the courtroom here and the various documents which I will be using for Frank Maiorana.

MR. KAPLAN: May I inquire through the Court if you have any document in response to Specification 1 of the subpoena dated September 20?

MR. PERSON: Yes, I have that before me as Document445 for identification (handing to counsel).

MR. KAPLAN: This doesn't appear to be

responsive, and I would like to ask the witness a question about it, and I think we can establish that. It is a rather important point.

THE COURT: All right, I will let you ask a question.

VOIR DIRE EXAMINATION

BY MR. KAPLAN:

Q Mr. Maiorana, I show you Plaintiff's Exhibit 445 for identification.

Does that document reflect the substance of any conversation between you and a man named Grover Durham? It is just the first page, sir. The second page is another exhibit.

A You asked what?

Q Does Exhibit 445 for identification reflect the substance of any conversation between you and a man named Grover Durham?

A It reflects that I had a conversation, but it was a notation to remind me I had this type of conversation.

Q The conversation was a conversation between you and a man named Foy, true?

A Right.

Q Not between you and a man named Durham, true?

A Right.

MR. KAPLAN: If I may inquire through the Court if there are any other documents responsive to Specification 1?

MR.PERSON: We have indicated in the pretrial brief no other documents and this is the one which we indicated that had some relevance.

Are you referring to any particular document?

MR. KAPLAN: No, I am not. It is a very simple specification, we specified each document which reflects the facts or substance of any communications between Anthony Maiorana and Grover Durham.

I know of no such document. I am really asking Mr. Person if there is any.

MR. PERSON: It doesn't take a subpoena to establish that. That is a document that we have listed in the pretrial brief and the only document I am aware of.

THE WITNESS: There is a second page to that. The other refers to that also.

THE COURT: You have the document before you, Mr. Kaplan. Can you look at them and I take it there is no document except possibly that number, whatever it is?

MR. PERSON: 445.

THE COURT: Which relates to this specification and if 445 doesn't, then that is a matter of argument and that ends it.

MR. PERSON: Also 446.

THE COURT: Those two things. Mr. Kaplan has seen those.

MR. KAPLAN: But then I would like to ask the witness about 446.

THE COURT: All right.

BY MR. KAPLAN:

Q Mr. Maiorana, I show you Plaintiff's Exhibit 446 for identification. Those, sir, are notes of a conversation between you and a man named Snyder, true?

A What?

Q 446 for identification are notes of a conversation you had with Mr. Snyder, true?

A No.

Q What are they?

A This is a notation that I put down that the Buick agency called and --

THE COURT: I will tell you you are going to have to make a very great effort to speak up. I have to hear you, my law clerk sitting in the jurybox has to hear you and the lawyers back there have to hear you.

THE WITNESS: I didn't realize that I was talking low. Normally I talk low.

THE COURT: You talk as loudly as you can and slowly, take your time, because all these people have to hear you.

A (Continuing) There is a notation I made --

THE COURT: Talking about 445?

THE WITNESS: 446.

THE COURT: All right.

A (Continuing) To refresh me of what happened. I have the date 9/1/7 on the top, the Buick Agency called. Grover Durham was the Buick district manager and that Jack Snyder talked to Durham when we originally, or when this account was originally gotten, this deal.

Q Is 446 notes of a conversation you had with Snyder or notes of a conversation you had with Durham or neither?

A No, this was notes of a conversation I had with the Buick Agency, a reminder, and of Jack Snyder, that I had talked to him originally. There is more than one conversation here.

Q What do you mean by the Buick Agency, sir?

A Foy Buick.

Q This is not a conversation that you personally had with Mr. Durham, true?

A No, no.

MR. KAPLAN: Thank you, sir.

MR. PERSON: Could you talk up, please, if you can?

THE WITNESS: Yes.

March 22, 1976 and also on December 13, 1974, we sought a ruling from your Honor with respect to the cutoff date of this case. On both of those occasions your Honor ruled that unless Mr. Person applied for and obtained leave to file a supplemental complaint covering post-1970 events there would be no evidence received on that subject. Your Honor ruled that way.

There was never any such application and consequently we have prepared this case on the premise that there would not be any post-1970 evidence.

Among other things, with respect to the specific episode here in question, we specifically refrained from examining Frank Maiorana before trial. Consequently, we object, and if your Honor would care I have a copy of the transcript of the pretrial on March 22, 1976 in which that ruling was made. It is at page 48 and --

MR. PERSON: The information is relevant and we can amend the pleadings to reflect this at the proper time. I think we tried to avoid a lot of paper work in the action.

THE COURT: No. This is not unnecessary paper work. There is such a thing as a supplemental complaint, just as there is a complaint, and when you are trying to frame issues for discovery it means something what the boundaries of those issues are.

If you had come in during the course of discovery and said to me you wished to include matters that occurred subsequent to the filing of your complaint, well, I would have considered that.

I don't remember at this moment what I said on any particular date, but I would like to see the transcript, and I don't imagine Mr. Kaplan is misreading it.

Let me see it.

(Pause.)

THE COURT: This is a hearing March 22, 1976. By this time the pretrial brief will be filed, of course.

The transcript of March 22, 1976, pages 48 through 51, the top of page 51, the ruling is exactly as Mr. Kaplan says, and this referred back to an earlier ruling of December 13, 1974, so the issue was first raised a little less than two years ago. I at that time time ruled that without an application to file a supplemental complaint the cutoff date for claims would be the date of commencement of this action, December 10, 1970. That's what it refers to; right?

MR. KAPLAN: Yes.

THE COURT: I never said I would not entertain a motion for a supplemental complaint. I said back in 1974 if you wanted to prepare a supplemental complaint you could draft it up and we would have a meeting, provided you had your documents in advance or we had something to discuss. Nothing like that has ever been done.

MR. PERSON: The case has been a long one and it's been continual discovery up until yesterday.

THE COURT: You put me in an awkward position. I don't want to be picayune about pleadings. This is not the way in this day and age to do that. But there is a limit to the degree of informality that we engage in.

I think after two express warnings and, beyond warnings, invitations for you, if you wanted to propose a supplemental complaint to come in and do it, that's where we stand. The invitation was not accepted. The cutoff date was adhered to right through, at least to this moment, and we are on the second day of a preliminary hearing which is tantamoung to the beginning of the trial, as far as I am concerned. That's where we are at.

I don't make assumptions of what you might be thinking of in a supplemental complaint. In a complaint you make plain about five or ten things. That would be up to you to frame. It is not up to us to sit here and imagine.

MR. KAPLAN: I am trying to have it introduced as evidence which is relevant and material which goes to prove the truth of the charges in the complaint. We are not adding any more parties. , I think it is admissible under that theory without the filing of additional papers.

THE COURT: I disagree. In other words, your theory would be that even if you cut off the claims, events occur afterwards which tend to prove the claims you make during the damage period, then you say it is relevant evidence?

MR. KAPLAN: Correct.

THE COURT: What about that?

MR. PERSON: An admission subsequent.

THE COURT: That's right in theory.

MR. KAPLAN: It's only a matter of theory. If your Honor looks at apges 65 and 66 of the pretrial brief the only thing we are dealing with here is the claim that a bottom representative said something to this witness in 1971 with respect to a transaction involving a Buick dealer in Philadelphia.

MR. PERSON: They are not bottom level.

MR. KAPLAN: That without more is hardly probative of what happened in 1966, 1967 and 1968 in Buffalo.

Furthermore, your Honor, the context in which this colloquy with you on March 22nd of this year took place was this: We had proceeded on the assumption that the cutoff was 1970. The plaintiffs' brief had then included alleged incidents with Lord knows how mqny dealers that were post-1970 and we were finding ourselves to some significant degree starting all over again just in March of this year with reams of new dealers.

I have a list here of people --

THE COURT: We are not talking about that. It is not going to be reams.

MR. KAPLAN: There are 14 or 16 of these episodes.

THE COURT: Post-1970?

MR. KAPLAN: Sure.

MR. PERSON: We have a limited amount for this hearing.

THE COURT: How much do you want to introduce post-1970?

MR. PERSON: During this hearing I don't think there is very much.

THE COURT: Very much what?

MR. PERSON: I would have to look at it.

We have requested a injunction so I think that the continuing nature of this activity does go to that particular part of the complaint; that is, if Mr. --

THE COURT: It might if you served a supplemental complaint.

Mr. Person, we took during the last day and and a half two instances of alleged refusals to deal in the Buffalo area. We have dealt with the claim of General Auto Sales & Leasing. They were refused cars by Batt Buick and Clements-

Gillogly Chevrolet. There were some general allegations of other people, but those two specific instances we heard. It was a day and a half to do that and it turned out to be an amazingly involved situation because of what the record shows.

Furthermore, because of the nature of this particular case it does seem to me that every allegation that is made in order to be realistically treated has to be investigated in advance of any hearing here, it has to be prepared thoroughly, and -- I don't know how to express it but this is almost a unique situation.

You have accusations made which are serious, which are difficult to really get down to the precise facts. It takes a lot of work to do that. At least in the last day and a half that's what is illustrated, and in previous proceedings in this action, and I'm just saying that I don't see how I can deal intelligently with something that is simply thrown out here.

T3

MR. PERSON: We set it forth in the brief.

THE COURT: But back in March I reiterated this cutoff and you did not urge upon me at that time the circumstantial relevance of this evidence post-1970 as proving the pre-1970 claims, so I gave you a cut-off. If the General Motors lawyers represent to me that they did not follow through and investigate these items where I announced a cut-off, then how are we going to try this thing today?

I will be hearing testimony from one side and my experience so far is that it is absolutely essential that I get two sides of this matter. So I ask you and I know you will be perfectly candid with me, I want to know whether you, Mr. Kaplan, or your people in your firm, have investigated or taken discovery or done anything with respect to the Foy Buick matter?

MR. KAPLAN: Let me give the status of this matter. Prior to your Honor's ruling this witness was examined about this episode. Subsequent to your Honor's ruling Frank Maiorana was examined and we expressly refrained from going into this matter on his deposition in reliance on your Honor's ruling.

THE COURT: Have you done any independent investigation?

MR. KAPLAN: We have done some independent investigation, but the independent investigation we would have done had we been certain it was in the case, and I will put it in absolute clear terms, we have spoken to Mr. Durham, we know what his side of the story is. We have not spoken before you. We will have done so --

THE COURT: But you did not get any records, you have not gone to Foy Buick and talked to them and get records?

MR. KAPLAN: Correct.

MR. KLEINBARD: May I add one thing, since I was making the application at that time? I think we got to be able to proceed on the assumption that everyone here is proceeding in good faith and in an attempt to take seriously what goes on in these various pretrial hearings. Otherwise I don't know what we are doing at all these pre-hearings.

Here is a situation where you had two such pre-hearings. Mr. Person was on more than ample notice. I just can't see if these are to mean anything how we can deviate in one situation or another. If we deviate here, then these other rulings make no difference.

MR. PERSON: This presupposes that the complaint serves more than the function of a complaint.

We are not obliged to have anything but simple clear language in the complaint. I don't have to go into the details of all the evidence.

THE COURT: There has been.

MR. PERSON: Then I am wrong.

THE COURT: That was the whole point of the proceeding and the whole point of asking you to write this book.

MR. PERSON: I wrote it up.

THE COURT: The book served an immense use and part of the use was to permit objections as to the extent of the proof.

I made a ruling and I am going to stick to that ruling. I say this very seriously, I would not do this if I didn't believe there was prejudice to the defense side and to the Court in allowing you to put on something which has not been thoroughly prepared.

There is a responsibility in this preliminary hearing upon me. I am the finder of the fact and I have to rule as to the extent of this conspirator hearsay evidence.

This is a very serious matter. I am the trier of the fact and Ipersonally feel that I would be prejudiced unless I get these different issues presented as thoroughly as possible on all sides.

I will adhere to the ruling, and that is that.

MR. PERSON: If we did limit the testimony as to what General Motors said to Anthony, and General Motors knows its own side since it already asked that, I think that would be sufficient without going into extreaneous detail.

THE COURT: That might be sufficient for you, but it may not be sufficient to round out the picture.

I didn't know about what the issues are and I am not going to spend a half-day and find out what the issues are and then find out that the preparation is incomplete.

I have been told by General Motors's counsel that they relied on my ruling and they had a right to rely on it, and that is where we leave it.

Let us go. What else?

BY MR. PERSON:

Q Mr. Maiorana, did you have occasion to meet with a Robert Di Simone and David Speece at any time?

A Yes, I did.

Q When did this occur?

A This occurred, I believe, the end of 1967.

other.

THE COURT: I'm sure you would. But the point is we are required at this hearing to consider whether there is nonhearsay evidence of the conspiracy alleged. So we have an additional problem in addition to relevance. We have the question as to whether it is nonhearsay evidence.

In my view, when Mr. Maiorana says that in January, 1968 or commencing January 1968 we were cut off from Rohrer, that is nonhearsay evidence. He must know of his own knowledge whether they were cut off or not, but his testimony is not the end of the line. His direct testimony, surely General Motors has a right to cross examine him about, and General Motors has a right at this hearing to put on nonhearsay evidence on that question; and I would say that the facts about what sales were made from Rohrer to Nabcor or its brokers during the relevant time is nonhearsay evidence that is relevant to our hearing.

If this is an inaccurate, unreliable document, I don't want it. But it's relevancy and competency for this year, I don't have doubt about it.

Is it accurate?

MR. PERSON: There are interstitial irrelevancies. We were cut off and then they started selling again.

THE COURT: You can develop this. This man told me this was a cutoff period. He didn't tell me they were cut off for one or two months. I would have had that impression, that the cutoff was an eternal one.

MR. PERSON: There was a series of cut-offs.

THE COURT: You didn't bring that out.

MR. PERSON: I have in the pretrial brief. I was trying to limit myself.

THE COURT: Let's not have any misunderstanding. I don't think there is any misunderstanding, Mr. Person. You put on evidence about a cutoff and you didn't have him testify that there was a cutoff and a resumption and a cutoff and a resumption. None of that is hearsay. It is all competent for this hearing.

The resumption is just as competent as the cutoff. If you were going to ask him about the cutoff and that's competent, you could have somebody told him something about a direction from General Motors. That's what in effect this would be, that it is a statement by Anthony Maiorana on the stand here that McIntyre told him something and I am supposed to take it against General Motors. Otherwise, if I am taking it against McIntyre, that's not the point. But, on the other hand, Mr. Person, it does seem to me that it would be possible to prove, through nonhearsay evidence, if McIntyre got all the cars that he sold to Nabcor from his inventory and never ordered any from the factory, that seems to me something that could be proved, that is not just hearsay testimony, but it is hearsay from this man. He does not know.

I will exclude this.

MR. PERSON: Here is the problem: Any time we talk about a refusal to deal, if we try to show why it happened we are in the hear of the hearsay problem.

THE COURT: That's the thing. I don't think that's necessarily so, though. In other words, you are certainly permitted to prove at this preliminary hearing General Motors' participation in a conspiracy by any nonhearsay evidence, and that would be circumstantial evidence. If you got the records of Rohrer Chevrolet that showed that beginning in December 13, 1967 or prior to that time they ordered cars from the factory; after that time they never ordered another car from the factory, that's a piece of evidence that would have meaning to a court. It is not hearsay, it can be proved. But not this way. That's the problem. It's the way that is objectionable until there is a foundation.

I will strike this testimony. It is purely hearsay and I could not use it for any purpose in this case.

MR. PERSON: I was trying to offer it to show that Nabcor was cut off because they are testifying they were cut off.

THE COURT: Mr. Maiorana, I assume, knows, at least he should be able to testify about, whether he bought cars from Rohrer or not. This Exhibit J pretty much has that record.

MR. PERSON: This only arose because Mr. Kaplan pointed to Exhibit J and said Nabcor has gotten cars throughout a long period and they were not cut off, and I want to show that in order to

THE COURT: What do you mean by that?

MR. PERSON: When the problem first arose during the deposition of Mr. Maiorana, at that point, realizing that they were going to claim that these documents were not delivered --

THE COURT: Is that contemporaneous with April?

MR. PERSON: I don't know the date.

THE COURT: You better find the date when the event occurred between Mr. Visz and your office.

Take that up this afternoon.

Continua, please.

MR. PERSON: I'll continue with his testimony and the documents are not crucial to it, anyway.

MR. KLEINBARD: Your Honor, there is a further objection here, and that goes to the scope of Mr. Zibold's employment. Mr. Zibold was employed in a single-car delivery section of the GM overseas department. He was therefore not competent to testify with regard to domestic distribution of cars. This is an entirely different aspect of our business, so we would maintain that in any event we are not bound because it is beyond the scope of his employment.

THE COURT: I will overrule that for the moment.

BY MR. PERSON:

Q When were you introduced to Mr. Zibold?

A In the spring of 1967.

Q Did you and Mr. Zibold discuss any of Nabcor's business?

A Yes. My entire supply, all of my supply sources were being cut off in the New York area, General Motors sources, and I had talked to Tom Cahoun about this problem. He was aware of the problems I was having. He told me that maybe he had some friends in General Motors that might be able to do something, and he introduced me to George Zibold.

Q What did you and Mr. Zibold discuss?

A I told him that I was in the brokerage business, selling automobiles through a system of brokers, and he said, "Yes, I know about you." He said, "I know you afe being cut off all over New York.: He said, "They are tracing the serial numbers back to the dealers. I know what you are going through and you are going to get cars in this area." He said, "The only way I can see that I can help you out is quite possibly through my brother-in-law who works in the Cadillac dealership that belongs to General Motors." General Motors Cadillac owned the dealership on 57th and Broadway. He said, "Maybe you could call him and maybe he can give you some cars."

I did that. I called him and I spoke to him.

THE COURT: What was his name?

THE WITNESS: I don't recall his name, your Honor. The name escapes me for the moment.

Q Where was Mr. Zibold's office?

A I do know he lived in New Jersey.

MR. KLEINBARD: He doesn't know his office?

A I'm sorry. Did you say Mr. Zibold's office? I thought you were referring to his brother-in-law.

THE COURT: That was not the question, no.

You were asked about Mr. Zibold's

BY MR.PERSON:

Q Did Mr. Zibold tell you where his brother-in-law was employed?

A Yes. The Cadillac showroom downstairs. That's what he said.

Q Did you communicate with the brother-in-law?

A Yes.

Q About how many times?

A On several occasions.

Q How long after your initial meeting with Mr. Zibold?

A How long after?

Q How did your initial meeting with Mr. Zibold take place?

A Tom Cahoun took me to his office and introduced me to him.

Q You met him in his office, Mr. Zibold's office?

A Yes. Then we went to lunch.

THE COURT: You say this Cadillac dealership was owned by General Motors?

THE WITNESS: Yes.

Q Was it a division of General Motors?

A I believe it was. It was a Cadillac -- it was a General Motors-owned dealership.

Q Approximately how long after you met initially with Mr. Zibold in his office did you communicate by telephone with Mr. Zibold's brother-in-law?

A I didn't hear the first part of your question.

Q How long after your initial meeting with Mr. Zibold did you telephone, speak by telephone, with Mr. Zibold's brother-in-law?

A It might have been within the next day or so, a couple of days. It was a short period of time.

Q Would you please describe the conversation you had with him?

A I told him I had spoken to George Zibold and related my problems to him. I told him who I was and what I was doing.

He knew of our system.

I told I needed soem cars. He was handling Cadillacs. He said the only way he could get me cars was if he sold them to me out of the retail as a retail deal, and the price would have been something like $900 to $1100, when they would become available. It was way out of line.

THE COURT: What do you mean $900 to $1100? Total price?

THE WITNESS: Over the dealer invoice. Over what General Motors charges to their dealer.

THE COURT: All right.

BY THE COURT:

Q What did you say to him after that?

A I told him, I said, "We have to buy the cars for the fleet price," which was in the range of 450 to 550 over dealer invoice, and that we would have to buy them in our own name. I said, "If you can do anything for us I would appreciate it."

He said he would have to talk to his boss, he could not get them that cheap. But if we needed maybe one or two cars badly enough to pay a little more or them, he would see what he could do.

He did talk to his boss and I also talked to him --

MR. KLEINBARD: Your Honor, on voir dire may I ask the witness this:

Do you know the name of Mr. Zibold's

brother-in-law's boss?

THE WITNESS: No.

MR. KLEINBARD: He doesn't know the name of the brother-in-law and doesn't know the name of the boss.

THE COURT: Let's go through this and see where it comes out.

MR. KLEINBARD: I want to take a formal objection to these two unidentified people.

THE COURT: Overruled.

BY MR. PERSON:

Q Did Mr. Zibold's brother-in-law state to you that he had talked with the boss?

A Yes.

MR. KLEINBARD: I object to that.

THE COURT: Overruled.

Q Did Mr. Zibold's brother-in-law identify his boss to you?

A Yes. I spoke to him.

THE COURT: This was a later conversation?

THE WITNESS: In the first conversation, your Honor.

Q Did you then communicate with Mr. Zibold's brother-in-law's boss?

A Yes.

Q How did this communication take place?

A Mr. Zibold's brother-in-law got his boss, who was either the sales manager or general manager of the dealership, and I told him what I wanted: I wanted to buy some automobiles from him. They handled Cadillacs.

He said, "The only way we can sell them to you is on a retail deal through a salesman."

Mr. Zibold's brother-in-law was a salesman.

He said, "If we have extras, that would be in the range of $900 to $1100 or $12000. That's the only way we could do it, and we would have to put it in the customer's name."

Q Explain what that means, please.

A Well, it means that if they had some extra cars they will be willing to sell them for that amount of profit, anywhere from $900 to $1200 profit.

I told him that kind of deal I could get almost anywhere, or anybody could walk in and get that kind of deal. I just could not go along with it. It was not what I wanted.

Q You had said something about putting it in the customer's name, I believe?

A Yes.

Q Could you explain what that means?

A Well, he said, "General Motors knows about you and we can put it in Nabcor's name. If you place it with the customer's name, we will put it in the customer's name and, in effect, they would be selling it directly to the customer."

Now, if our broker could charge a price higher than that $1100 profit, then it would be a profit to the broker. It would be sort of like a referral or bird dog system, which was not our system, and I just couldn't go along with it on that basis.

That terminated that part of the discussions with Mr. Ziebold's brother-in-law.

Q Did you discuss whether orders could be placed according to customer's specifications?

A Yes. I told them our entire system is such that the customer orders the automobile to his specifications and it is ordered built by the manufacturer and it comes in and he knows he is going to be a brand new car, buying cars out of stock that might have been in the dealer's stock six months is something that, as far as I was concerned, was not part of our business.

It was something that we wanted to avoid, something that we felt there was a place for our system that the customer was assured of an absolutely brand new car if he bought it through us.

Q Did the manager state that he would be willing to sell cars to customers of yours out of retail stock of the dealership?

A It would have to be out of retail. He would not order them for us.

Q He refused to order cars according to Nabcor's specifications?

MR. KLEINBARD: I object to the leading, your Honor.

MR. PERSON: I just want to clarify that.

THE COURT: Well, you clarify it and it is certainly leading. Let's get the witness to recite the whole conversation in his words. You don't have to be testifying for him.

MR. PERSON: I am sorry, your Honor.

Q Did you subsequently communicate with Mr. Ziebold?

A Yes. I called him back and told him, I said that his brother-in-law couldn't do anything for me.

He was a salesman as far as buying cars, and on that basis, putting them in the customer's name and buying what they had, where we would have to tell our customers that they couldn't have this piece of equipment or that color or whatever, just wasn't our system and wouldn't be good.

So anyhow he let it go for a while and subsequently we had another meeting with Ziebold in which Tom Cahoun was with me and we went to lunch.

Another individual who worked with George Ziebold came with us. We discussed the possibility, the only way he could help me possibly getting cars --

THE COURT: You had a meeting and I take it you were present?

THE WITNESS: I was present. Tom Cahoun was present.

THE COURT: Mr. Ziebold was present and anybody else?

THE WITNESS: Yes, there was another individual, a friend of George Ziebold who was an employee of General Motors, working in the same department.

THE COURT: Do you remember his name?

THE WITNESS: No, I don't, your Honor.

THE COURT: When was this meeting?

THE WITNESS: It was some time in the early summer, around June, I guess. June or July.

THE COURT: 1967?

THE WITNESS: Of 1967, yes.

Q Could you describe what discussions took place with Mr. Ziebold at the luncheon or on the way to the luncheon?

A Well, we discussed how he could help us. He discussed --

THE COURT: Who is "he"?

A George Ziebold. That the only way he could help us was through the Foreign Car Distributors over which he had some interest, if I could use that word. He can get us cars in that manner.

Q Did Mr. Ziebold propose any type of transaction which he thought he could arrange?

A Well, mainly --

THE COURT: Why don't you let this witness testify. I take it there was a meeting, right?

THE WITNESS: Yes.

THE COURT: Tell us about the whole meeting, everything.

A (Continuing) The business of the Internation Division or Foreign Car Division was that Americans going overseas as tourists could go to a foreign car distributor and buy an automobile there for delivery in the United States and get a better deal themselves.

Now, there were certain people that were takint advantage of this and making a business of it. Tom Cahoun was one of these individuals that was dealing with foreign car distributors who had more American cars than they could sell to the nationals there and they didn't have --

MR. KLEINBARD: Canwe have the conversation?

THE COURT: It is not responsive,and in the second place, I don't understand it.

Just give us the conversation, not background, and if we need background we will get it.

A (Continuing) He had foreign car distributors, he would see what he could do about maybe getting some cars to the foreign distributors of General Motors.

At that time there were five in Spain who handled all of the General Motors makes and he would see what he could do about getting us some sort of supply from them.

That was in substance what was said, what the conversation was about, your Honor.

THE COURT: All right, next question.

2

Q Did you have the occasion to meet with Mr. Ziebold in his office subsequently?

A When we came back, in the taxicab we were discussing all this. We went up to his office, I don't know what floor it was on, and sat at his desk and he discussed some of this and he introduced me to his boss, someone in charge of that particular division or -- it was sort of a large room, half a floor, whatever, and he had a private office on one end of it.

Mr. Ziebold introduced me to him. I don't remember his name.

He said that he would like to -- we had some customers that we would like cars for, words to that effect, and he would like to help me.

This subsequently led into letters of introduction that George Ziebold supplied to me. One was to a distributor --

MR. KLEINBARD: These are the letters which were objected to and as to which we agreed we would have a voir dire later on this afternoon.

THE COURT: Well, let us --

MR. PERSON: I really don't believe that the letters --

THE COURT: Let's get this and see how it comes out. I will allow the question.

A (Continuing) He gave me two letters of introduction to a Julio Jimenez and somebody Blitz and another letter to -- the name escapes me for the moment, an American living in Spain, as I found out when I went there.

But two letters of introduction, and I subsequently with these letters, I did go to Spain and I did visit with the one individual in a dealer's showroom and he took me to this Blitz. Jiminez had been -- they had about five distributors and they handled this whole distribution system --

MR. KLEINBARD: I object to that.

THE COURT: What has this got to do with General Motors?

MR. PERSON: These are distributors, foreign dealers of General Motors, and Mr. Maiorana went there for the purposes which he can now testify to.

THE COURT: Will this lead to further admissible evidence, direct non-hearsay evidence against General Motors?

MR. PERSON: To show the efforts that Nabcor went through to try to obtain automobiles, your Honor.

THE WITNESS: Plus further discussions with dirtied up with that type of dealing.

Q How long did you remain overseas?

A Approximately three weeks to a month.

Q Did you have the occasion to communicate subsequently with Mr. Ziebold?

A Yes.

Q Could you tell me what that communication was?

A When I came back I told him what happened and Bertrim Schader was trying to work out some sort of deal where he would be buying the cars, we would order from him, he would buy the cars from the distributor and ship them in to the foreign office here for delivery to some dealer in the United States and our customer would then go in and say he just got back from overseas and was here to pick up his car.

I told him I couldn't live with that situation, I didn't want to get involved with it. It is not what our business is. It just had to be a direct sale.

Q Was there anything else at that time with Mr. Ziebold?

A He says, "Well, I can't help you out. I can't get you cars except in that manner."

3

Q Did you have another communication with Mr. Ziebold subsequent to that?

A Yes, I did. I had one in 1973 prior to the preliminary injunction when I called him and asked him if he would come and testify on our behalf and tell what he knew about us getting shut off and everything else.

He said he would, he didn't care. He had a certain amount of bravado about him. He said, "Fine, that is what happened, and I don't mind telling it."

I continued discussing it with him and he said, "But first I would like to talk to my boss about it. I do have a job with them, call me back."

I called him back either the same day or the next day: He had talked to his boss and his tone changed considerably at that time.

He said, "Look, I have a job to protect. I was only doing you a favor if you could get cars, they shut you off. Why get me involved in the situation?"

He said the best that could happen is he would lose his job and "I really don't want to get involved."

He says, "If you want me to testify you will just have to subpoena me and if you do, you may get me to lose my job and I don't think it is fair," and all this sort of business.

"Why don't you call my brother-in-law, he is no longer working for General Motors, and I am sure he would testify for you."

He gave me a number in New Jersey I think it was, and I tried to get ahold of him but I was unsuccessful, and just dropped it because I didn't want to get him into any further problem.

Q Did you arrange a communication with Mr. Cahoun in connection with the preliminary injunction hearing?

A Yes, I did.

Q Did you make any arrangements with him concerning any appearance?

A Yes. I told him if he recalled the incidents back then. He said he did and he would be willing to testify for me and he appeared at the hearing.

Q Did you have any subsequent communications with Mr. Ziebold?

A I don't recall any further discussions with him, Mr. Person.

Q Did Nabcor or its franchisees have any dicated by agreement with me that they would come over to inspect these documents. The documents were in a room and they spent two days copying what they wanted and did not want --

THE COURT: I don't want to get into that. Then I have to hear General Motors' side.

I am going to admit them in evidence simply because I don't want to exclude them and I am not agreeing or disagreeing with either side's contention as to when they were produced.

To me they don't add anything to the testimony given, they are not illuminating in any degree as to whether there was or was not a conspiracy of the kind alleged.

Mr. Maiorana may have gone to Europe to try to make deals for cars, that could have happened because of a conspiracy and it could have happened without a conspiracy. It doesn't mean anything to me.

Now, the more important matter which is not proved or disproved by these documents is whether Mr. Ziebold made an admission to Mr. Frank Maiorana as follows:

Mr. Maiorana says that he talked to Ziebold and Ziebold said, "I know you are being cut off in New rp5

York, dealers are being threatened."

Now, there may be one or two other admissions, so-called admissions by Ziebold, but those are the things that are crucial, and I will admit these. That means 462 through 468.

MR. KLEINBARD: Your Honor, I just want to indicate my objection to this whole line that Ziebold is not in a position by virtue of his employment to have made any such admission or had the knowledge with respect to the corporation. I intend to prove that through somebody else. That is my objection to this line.

THE COURT: All right.

MR. KLEINBARD: Unfortunately, I can't call him.

xx (Plaintiffs' Exhibits 462 through 468 for identification received in evidence.)

person, a road man or representative. Do you recall his name?

A McMahon.

And there was a party, a Jack Summers.

Q The bottom card we are disregarding for the time being.

THE COURT: There are only three people from the New York office of General Motors: Holzworth, Eckart and McMahon that are listed on Exhibit 469?

THE WITNESS: These were the three people, yes.

Q Had you been introduced by Mr. Stewart to any other GM officials at any time prior to that?

A I was introduced as a result of this. It was subsequent to this. I think it was subsequent to this.

Q Do you know a Mr. Walter Gray?

A Walter Gray is a fleet man for a Pontiac zone.

Q Have you ever been introduced to him?

A Yes.

Q Who introduced you?

A Actually he came in and introduced himself, but it was as a result of Earl Stewart's efforts and this meeting with the three Pontiac offiicials.

Q Could you state briefly what transpired at the time that you met these three Pontiac officials?

A Well, as I said, there was a meeting, a NAFA meeting, and during the meeting I was invited downstairs. This was in the Park Sheraton Hotel, 56th and Broadway. I was invited downstairs. Bud Morrison was there, Earl Stewart was there, and these three General Motors officials were there, at the bar having some drinks. I joined them.

They went into a conversation of how I was buying quite a few Pontiacs, and Earl Stewart was making quite a to-do about that, and they were elated over the prospect that I might buy a large volume of Pontiacs.

At that time Pontiac was vying for the No. 3 position. And they gave me a gold pin, a gold numeral 3, a lapel pin, and said, "Sell a lot of cars." And a discussion came up as to whether I should not have a fleet certificate. I think Earl Stewart brought that up.

Anyhow, as a result of that, Earl Stewart applied for a fleet certificate and Walter Gray came to the Westchester Town House, our offices, some time in November of 1966, early December, possibly, and went into a whole discussion of what cars we had, how many we would need and how many we had registered.

That was another story, but at that meeting this is what transpired.

T3

Q Was anything else said at that meeting with Mr. Gray?

A Mr. Gray?

Q Yes.

A Mr. Gray came in, introduced himself, and he immediately went into a very probing line of questioning as to what we were doing and how we were disposing of the cars and did we have any cars registered? How many cars were we buying?

I told him at the time -- he said I had to buy at least 10 automobiles a year of General Motors make and I said we were buying far in excess of that.

He said, "Will you register the cars?"

I said, "No, we will not register the cars. We buy the automobiles for our customers and we register them in the name of the customer."

He said, "In order to get a fleet certificate you would have to have cars registered in your name."

I said, "Well, that is not our system, that is not the way we do things, but we can give you a list of purchases that we have."

Then he says, "Okay, give me a list of 25 purchases."

Then we had a subsequent meeting, and then from that list of purchases that I had given him, purchases and serial numbers, he wanted registrations.

I told him we do not register the cars in our name --

THE COURT: Was this a subsequent meeting or what?

THE WITNESS: Yes, a subsequent meeting.

THE COURT: You gave him a list of 25 customers?

THE WITNESS: Yes. The first meeting it went from 10, it went to 25 purchases.

THE COURT: Is that Gray's request or what?

THE WITNESS: Gray's request, yes.

THE COURT: Did you give him the list at this meeting or a subsequent meeting?

THE WITNESS: I don't recall. It may have been at that meeting or it may have been at the second meeting. It may have been the first one, your Honor, I don't recall now.

THE COURT: Then what happened?

THE WITNESS: Then he wanted registrations, he wanted tags, tag numbers.

THE COURT: At the same meeting or later?

THE WITNESS: No, a later meeting.

THE COURT: How did you respond to that?

THE WITNESS: Well, as I told him in the beginning, we do not register the cars in our name. We sold the automobiles, we purchased automobiles for our customers and put the cars in their name.

He said, "We can't give you a fleet certificate unless you have cars registered in your name and we can sell you cars. You are bootlegging cars and we can't give you automobiles on that basis."

That was the substance of what the conversation was about.

BY MR. PERSON:

Q Did the subject matter of any fleet certificate come up?

A That was it, for the fleet certificate. Earl Stewart had applied for a fleet certificate for us and Walter Gray was there for the purpose of finding out what we were doing and why and whether he should give us a fleet certificate or not. It was turned down.

Q Who advised you of the turning down?

A Earl Stewart.

Q Were you dealing with Ruckle Pontiac, though, weren't you?

A Yes.

Q About how many cars were ordered and delivered by Ruckle Pontiac until that date?

MR. KLEINBARD: I object to the leading.

Q Did Ruckle ever refuse to deliver cars or deal with you?

A About a month after that --

Q Just --

A Yes.

Q How many cars up to that point had been ordered and delivered by Ruckle Pontiac to Nabcor?

A I don't recall, 40 or 50 I guess; something like that.

Q Did you have any cars on order at the time of this refusal to deal which you are referring to?

A Yes, I believe we had about 10 or 12.

MR. PERSON: I would like to introduce into evidence Exhibits marked 470 through 482 for identification, consisting of various orders.

THE COURT: At the time you say you were cut off how many did you have on order at Ruckle?

THE WITNESS: About 10 or 12, your Honor.

THE COURT: Any objection to 470 to 482?

MR. KLEINBARD: Your Honor, I am looking at sations with him?

A Yes. I believe I finished with that. He was going to refer the matter, referred me to Mr. Marcus or some other General Motors official.

Q Did you communicate with this Mr. Marcus?

A Yes.

Q How many times did you communicate with him?

A I believe I spoke to him two or three times.

Q Do you recall what you discussed the first time you communicated with him?

A Yes. We wanted this car drop shipped here. He called, if I recall, Mr. Stolarski --

Q Did he tell you that?

A I asked him why he --

THE COURT: Did you call him?

THE WITNESS: Yes, I called him, and he had called Mr. Stolarski. I don't remember whether he told me he called him or I told him or asked him why he called Mr. Stolarski.

But we did get into a discussion that he called Mr. Stolarski and expressed displeasure or something about his buying a car through Nabcor.

THE COURT: Who said that?

THE WITNESS: Mr. Marcus, something to a

General Motors official --

THE COURT: Marcus told you that Stolarski --

THE WITNESS: Stolarski told me that Marcus asked him why he bought it.

THE COURT: Strike that. That is stricken.

THE WITNESS: But I asked Mr. Marcus why he got involved in telling Mr. Stolarski who to buy his cars from and he said we shouldn't be selling cars, we are not a dealer.

THE COURT: All right, I will admit that evidence.

Q Did you have any further communications with him at that time?

A I told him what are we going to do with this problem of getting a car delivered to Mr. Stolarski?

Primarily the problem at hand here is not whether he approved of us or not.

He said, "Okay, if Shore Chevrolet wanted to do a courtesy and deliver we will approve a drop shipment to Shore Chevrolet."

So I called Wamsler and he told me that he would do a courtesy delivery for $50 if it was all right with Chevrolet or General Motors.

I then called Marcus back and he said that he would make the arrangements and the car would be drop shipped at Shore Chevrolet.

The next thing I heard was that the car was not going to be drop shipped anywhere.

THE COURT: Where did you hear that?

THE WITNESS: From Moe Cerota.

MR. KLEINBARD: I object to that.

THE COURT: Can't you control this?

MR. PERSON: That is controlled. This is the terminal part of this incident that the fact that the car was not drop shipped but delivered miles away from the customer to New Jersey, and that is where the customer had to go to pick it up.

The witness wanted to include that to show --

THE COURT: What happened? Don't give us a lot of conversations at this point, just what happened.

THE WITNESS: General Motors refused to drop ship the car to Shore Bros. and they shipped the car to Elmer, New Jersey, to Cerota Chevrolet.

MR. KLEINBARD: I am not disputing the fact that it was delivered to Cerota, not Shore, and that is all I am conceding.

THE COURT: We will change that.

THE WITNESS: Your Honor, I called Mr. Marcus back and asked him why and --

THE COURT: Fine, we will come to that in a minute.

Cerota is in New Jersey?

THE WITNESS: Yes, Elmer, New Jersey.

THE COURT: Then you called Mr. Marcus?

THE WITNESS: Yes.

THE COURT: What did you say to him and what did he say to you?

THE WITNESS: I challenged him on why he didn't go through with his promise that he would make the arrangements to drop ship this car to Spore Chevrolet in Detroit and the car was going to Cerota Chevrolet.

He said,"Well, you are not a dealer, we are going to ship the car to the dealer. General Motors has to approve drop shipments and we are not approving a drop shipment and that is about our position on it, and that is it. If Mr. Stolarski wants his car he can pick it up at Cerota Chevrolet."

That was the end of that conversation.

The conclusion of that was that Mr. Stolarski had to make arrangements to come down to pick up that automobile. Moe Cerota said he was going to sell the car direct to him. We paid him with our draft.

MR. KLEINBARD: I object to that.

THE COURT: Please --

MR. PERSON: This is the end of the conversation and transaction.

THE COURT: But whether it is the end or the middle or the beginning, haven't you gone over the matter with your witness and you know the difference between admissible hearsay and questionable hearsay and other things.

MR. PERSON: Your Honor, I think that the record should reflect the disposition of the transaction.

THE COURT: I am sure it should, but a lot of conversation -- what happened without him telling a lot of conversations?

Was the car picked up on behalf of Mr. Stolarski?

THE WITNESS: It was, and we paid for it.

Q In Elmer, New Jersey?

A Yes, sir. Might I add it was put in the customer's name, not Nabcor to the customer as it should have been, but from Cerota to the customer, although we paid Cerota Olds-Chevrolet with our draft.

Q Did All Crest have a fleet certificate?

A Yes.

Q After Nabcor was --

THE COURT: It is so peripheral. You know, the Colonial Cadillac thing we spent two nights on one time. There were circumstances that were peculiar to that deal, and to say that Colonial Cadillac was willing to deal with All Crest before and after Nabcor, I would have to find out exactly what the circumstances were: Did All Crest accept its orders? Did they follow there? How did they do business versus how Nabcor did business in the Colonial Cadillac thing?

I think for the protection of this hearing I am not going to hear this evidence. We have plenty of other work to do.

Q Did Nabcor, during the first year of oeprations, place any orders with Colonial Cadillac?

A Yes, about 40.

Q By the end of the year were these orders outstanding still?

A Yes.

Q Had any cars been delivered at all?

A None of the ones that were ordered.

THE COURT: I didn't get you. Murray said he would sell you but you had to have a fleet certificate?

THE WITNESS: Yes.

Q That is before Colonial.

MR. PERSON: I don't want to go into that again.

THE COURT: Fair enough. You are asking whether there were other dealers who said they would not sell to you without a certificate? That is your question?

MR. PERSON: Yes.

Q Did Mr. Murray say after 1966 that he was willing to sell cars to Nabcor?

A Yes.

Q Did he state what conditions must be met in order for you to purchase cars from Colonial?

A He said we have to have a fleet certificate.

Q Is this true as to any other General Motors francbise dealers?

A Yes.

Q Could you name some of these dealers who had refused to deal with Nabcor unless Nabcor had a fleet certificate?

THE WITNESS: Cunningham Buick, Yonkers.

THE COURT: That later became Sharkey Buick?

THE WITNESS: It was Sharkey Buick first and was taken over by the factory and became Cunningham Buick. They told us they wouldn't deal with us because we didn't have a fleet certificate.

A dealer in Orlando, Florida, the dealer's name escapes me for the moment, an Oldsmobile dealer.

BY THE COURT:

Q Tomlinson Oldsmobile?

A Yes. In fact, there is a letter to that effect, wouldn't deal with us without a fleet certificate.

THE COURT: I will hear that.

A Quite a few. I would have to look at the list to refresh my recollection, but there was Bob Bain Chevrolet; Cunningham Buick, when taken over by Sharkey, which is No. 2.

MR. KLEINBARD: May I have an objection to this line of questioning?

THE COURT: All right. You have some gray areas here.

MR. KLEINBARD: I understand.

THE COURT: I will receive it.

Cunningham Chevrolet?

BY MR. PERSON:

Q Luby Chevrolet?

MR. KLEINBARD: Excuse me, are you leading the witness?

MR. PERSON: I am just trying to hasten the proceeding on.

THE COURT: Have you got a list?

MR. PERSON: I have a list of co-conspirators which I really --

MR. KLEINBARD: I object to having --

THE COURT: Please, if you wish to show him something to refresh his recollection, you can show it to him. Then it is a question of credibility.

MR. PERSON: Could I show him the pretrial brief where I have a list of co-conspirators to refresh his recollection if he needs it?

Q This is the start of the list of co-conspirators (handing to witness).

A A.C. Chevrolet was one.

MR.KLEINBARD: I just want to ask one question. Is the witness testifying from his recollection or --

THE WITNESS: From my recollection.

THE COURT: Why don't you wait until cross.

You gave us A.C.Chevrolet?

THE WITNESS: Yes.

THE COURT: What else?

THE WITNESS: Bob Bain Chevrolet.

THE COURT: You mentioned that. You mentioned Cunningham and Tomlinson Oldsmobile in Orlando, Florida?

THE WITNESS: Right.

Jerry Biggers Chevrolet; Block Pontiac.

THE COURT: Are you about finished with your direct examination?

MR. PERSON: Yes.

THE COURT: All right.

THE WITNESS: Cerota Chevrolet Oldsmobile; Chief Pontiac; Colonial Cadillac; Carey Chevrolet; Degnan Chevrolet.

MR. PERSON: I would like to just ask if we could stipulate somehow so we don't have to go through the list. Would Mr. Kleinbard be willing to do that, that there was a substantial number of General Motors tranchise dealers who during the period refused?

THE COURT: That this witness would testify that there were a number of General Motors dealers during this period who he would say refused to deal without a fleet certificate.

That is what your testimony would be?

THE WITNESS: Yes. I am skipping quite a few that did not refuse me personally but refused employees of mine or brokers. Just the ones that I know personally.

THE COURT: Anything else that you want to ask him about?

Q Did you have any refusals to deal with Nabcor by dealers who never agreed at the outset to deal with Nabcor for the reason of not having a fleet certificate?

MR. KLEINBARD: Could I hear that question again?

MR. PERSON: I will rephrase the question.

Q Did any General Motors franchise dealers refuse to deal with Nabcor at the very outset because Nabcor did not have a fleet certificate?

A Yes.

Q As distinguished from dealers who had initially agreed to deal and subsequently refused to deal?

A Yes, there were.

Q Is there any way you can estimate the number of dealers, General Motors dealers who initially refused to deal with you because of the fleet certificate problem?

A I would have to refresh my recollection, but I would say at least several dozen.

Q These are dealers that had never agreed to deal with Nabcor?

A Right.

Q And about how many of those who had agreed to deal with Nabcor subsequently refused, approximately, because Nabcor did not have a fleet certificate?

A To me directly or through the whole system?

Q To you directly, let's say.

A I would say 20, 25, 30, maybemore.

MR. PERSON: I am finished with direct examination, your Honor.

THE COURT: All right.

THE WITNESS: If I could add something, there was Mr. Fleagle, a General Motors official, that I started to say which was in conjunction with Rohrer Chevrolet, and --

THE COURT: I just can't have this, it is too confusing. Do you have any further questions, Mr. Person?

MR. PERSON: No.

THE COURT: 10 o'clock tomorrow.

(Adjourned to October 13, 1976, at 10.00 a.m.)

right at the moment.

Next question.

BY MR. KLEINBARD:

Q Did you tell Mr. Belcher that Nabcor's biggest problem in getting cars was GM's requirement for a fleet certificate?

A Yes. It was a major problem.

Q Did you acknowledge to him that a fleet certificate is not an actual GM requirement but that many dealers, especially small dealers, think so?

A I believe that we discussed my opinion on that. What that meant in the conversation was that --

Q Can't you answer yes or no to that question?

THE COURT: Let's have the question read. You focus on that and answer it. Tell us whether you said that or not.

(Question read.)

A I don't know. When you say an actual GM requirement, it's possible that I said that. I seem to think I said that it was not necessary with large dealers and with certain automobiles.

Q Is your answer yes?

A Yes. I believe that's in substance what I said.

Q You believe you said that?

A Yes.

THE COURT: I'm a little disoriented. How did the name Walter Gray come up?

MR. KLEINBARD: I asked the witness whether he had mentioned him to Mr. Belcher.

THE COURT: Did he come up yesterday?

MR. KLEINBARD: Yes.

THE COURT: What was the context?

MR. KLEINBARD: It was in connection with an application for a fleet certificate suggested by Mr. Stewart of Ruckle Pontiac.

THE COURT: Thank you.

BY MR. KLEINBARD:

Q Did Mr. Belcher ask you at this meeting if you thought that getting a fleet certificate for Nabcor would help?

A Yes, he did.

Q Did you claim that you said it would because then GM dealers would be willing to sell you?

A Yes. In substance that's what I said, that the small dealers would ask for a fleet number and they felt that a certificate was necessary and we could not do any business with them unless we had one, and it may help.

He said it would not help the present situation but it may help in some of the outlying areas.

Q The fact of the matter is that you wanted a fleet certificate in order to use to help sell Nabcor franchises, is that correct?

A No, I did not make the suggestion.

Q You had a whole book of materials designed to help you sell franchises, is that correct?

A Yes.

Q I show you Defendants' Exhibit WW. I ask you if this is not the book which you were using to help sell franchises.

A No. That was not a book that we used to sell franchises.

Q What did you do with it?

A These were materials that -- let-

AFTERNOON SESSION

2.25 P.M.

MR. KLEINBARD: Your Honor, following our conference in chambers, I am going to attempt to adopt myself to your Honor's suggestion, though of necessity it involves moments of hesitation because I have to eliminate material.

THE COURT: All right.

MR. KLEINBARD: I will do the best I can.

FRANK MAIORANA, resumed.

CROSS EXAMINATION CONTINUED

BY MR. KLEINBARD:

Q Mr. Maiorana, I would like to read from Mr. Maiorana's deposition taken on September 16, 1976, at page 1473, two or three preliminary questions.

"Q Nabcor intended to resell cars in competition with franchised automobile dealers, isn't that right?

"A That's right.

"Q And if a dealer was told that Nabcor was reselling or that the Nabcor system was a brokerage system, it would be apparent to that dealer that he might be selling cars to a company that would then compete with him, isn't that right?

"A That's right.

"Q And a dealer therefore could, and I stress could, and I don't necessarily say it would, independently reach the conclusion that selling to Nabcor was against his best business interests, couldn't he?

"A Yes, and some did elect not to sell us automobiles."

Mr. Maiorana, did you have occasion to write to Ruckle Pontiac about what you described as an unfortunate incident which jeopardized your relationship with Ruckle Pontiac?

A I would like to know what you are alluding to.

Q Yes. First, do you recall the incident?

A I would have to see what it was that you are speaking of.

Q I show you Defendants' Exhibit I which has been premarked, and ask you if you wrote that letter which I am informed was attached to your preliminary injunction papers.

Have you read it?

A Yes. Your question, Mr. Kleinbard?

Q My question is, is that a letter which I represent to you was annexed to your moving papers on the motion for preliminary injunction, and ask you whether you wrote that letter?

A This letter, the signed copy?

Q Not a signed copy, a copy.

A The signed copy of this?

Q I do not have the signed copy. You anned it to your preliminary injunction papers.

THE COURT: The question is, is that a letter of yours? It doesn't make any difference whether we have a signed copy.

THE WITNESS: I don't recall.

THE COURT: You don't recall?

MR. KLEINBARD: I offer, your Honor, notwithstanding the witness's failure to recollect on the ground it was annexed to the moving papers on the motion for preliminary injunction, and that is sufficient authentication.

THE COURT: Just so the record is clear, where is that? Are the moving papers here?

MR. KLEINBARD: I am sure we do have them.

MR. PERSON: I have a set.

THE COURT: You concede, Mr. Person, that is a document attached to the moving papers?

MR. PERSON: D o you have a reference, Mr. Kleinbard? Yes, Exhibit R. It was a copy attached to the moving affidavit for the preliminary injunction motion.

THE COURT: Can I see that affidavit?

(Handed to Court.)

THE COURT: Does Mr. Maiorana in the affidavit adopt it as his letter?

MR. PERSON: It was referred to as an exhibit for the purpose of proving that we were dealing with Ruckle Pontiac. I am not sure what else was said.

MR. KLEINBARD: Your Honor, it seems to me he has to adopt it as his letter, otherwise --

THE COURT: Maybe it is a forged letter that was used. I don't know what he says in his affidavit.

MR. KLEINBARD: He says, "Sees Exhibit R." I will hand it up.

THE COURT: I have the affidavit. What page?

MR. KLEINBARD: Pages 27 and 28 of the affidavit, now Defendants' Exhibit OOO.

THE COURT: What is the paragraph? Is that Paragraph 5, name and address of GM dealer?

MR. KLEINBARD: That is correct.

THE COURT: "Name and address of GM dealer, make of new GM automobile sold, Pontiac, 3/22/66.

Fleet price $75 over less 1 per cent. See Exhibit R."

MR. KLEINBARD: Exhibit R is the letter you have in front of you.

THE WITNESS: Doesn't that refer to a letter, your Honor, stating the agreement to purchase automobiles at 75 less 1? Didn't I hear you read that as being Exhibit R?

MR. PERSON: There is more than one letter.

THE COURT: There are several letters in Exhibit R.

Why did you have this letter attached to your affidavit if it wasn't your letter?

THE WITNESS: I can recall this incident and tell you exactly what transpired.

THE COURT: That is not the question. We are taking time because you were presented with this letter which is Exhibit I for identification, and you say you don't know whether or not it was your letter, so we are consuming time to see whether or not it was your letter.

My question to you is, it is now established that in your affidavit in support of the preliminary injunction motion you referred the Court to correspondence in relation to Ruckle Pontiac and attached this letter as one of those documents. You didn't say it was forged.

Why did you attach it if it wasn't your letter?

THE WITNESS: I don't recall, your Honor.

THE COURT: Does it refresh your recollection?

THE WITNESS: It does refresh my recollection to the incident that took place.

THE COURT: Is it your letter?

THE WITNESS: It is possible.

THE COURT: I am going to find it is his letter and I think he is evading the questions. I am going to receive it.

MR. KLEINBARD: Thank you, your Honor.

xx (Defendants' Exhibit I for identification received in evidence.)

MR. KLEINBARD: The date of that letter that you just received is March 10, 11967, and I direct your Honor's attention to the fact that the forwarding note which accompanied the return of the orders from Ruckle Pontiac, which we discussed yesterday, Plaintiffs' Exhibits 470 and 471, is dated March 20, 1967, ten days later.

THE COURT: Just a minute.

OLIVER C. HAMISTER, called as a witness by defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KAPLAN:

Q In 1967 you were the vice president and a stockholder of Hamister-Gillogly Chevrolet?

A Yes.

Q That was located on Union Road in West Seneca, New York?

A Yes.

Q Is that near Buffalo?

A Yes.

Q Do you know a man named Donald Bolling?

A Yes, I do.

Q Did he ever work for Hamister-Gillogly Chevrolet?

A Yes.

Q What was his position?

A He was a salesman.

Q Was he ever in management?

A No, he was not.

Q When did he work for Hamister-Gillogly?

A 1967.

Q Do you know a man named Gary Kuhaneck?

A Yes.

Q Was he ever employed by Hamister-Gillogly Chevrolet?

A Yes.

Q What was his position?

A He was a salesman.

Q When did he work for you?

A In 1967.

Q Do you know a man named Richard Holstead?

A Yes.

Q Did he work for Hamister-Gillogly Chevrolet?

A Yes.

Q That was also in 1967?

A Yes.

Q What was his position?

A He was sales manager.

Q Do you know a man named Robert English?

A Yes, I do.

Q You knew him in 1967?

A Yes.

Q In what connection did you know him at that time?

A He was a district manager for Chevrolet and he called on us.

Q Did there come a time when Mr. Bolling and Mr. Kuhaneck left the employ of Hamister-Gillogly Chevrolet?

A Yes.

Q When was that?

A In 1967.

Q Do you remember what part of the year, sir?

A Around the middle of it, I believe.

Q After Mr. Bolling left Hamister-Gillogly Chevrolet did there come a time when you and Mr. English and Mr. Bolling had a conversation together?

A Yes.

Q When was that in relation to the termination of Mr. Bolling's employment?

A Some time afterwards. I don't know exactly.

Q Where did that conversation take place?

A In my office.

Q At Hamister-Gillogly Chevrolet?

A Yes.

Q Who was present on that occasion?

A Bob English and Bolling.

Q And yourself?

A Yes.

Q Was Mr. Holstead there?

A No, he was not.

Q Was Gary Kuhaneck there?

A No, he was not.

THE COURT: It was you, Mr. Mr. English, and Mr. Bolling?

THE WITNESS: Yes, sir.

THE COURT: When was this? Some time after they left?

THE WITNESS: Some time after Bolling was not a salesman. I don't know when.

BY MR. KAPLAN:

Q How did it come about that you and Mr. Bolling and Mr. English were together on this occasion?

A Well, English was in there on a routine call. We were ordering cars or some such thing. Bolling stuck his head around the door, in the corner of the door there.

Q Would you please tell us what was said from the time Mr. Bolling arrived until the time he left?

A Well, I just remember his conversation about the Corvettes, $50 he said he could do, and English thought it would take 500, as I recall, to get them out. He was saying he could buy Corvettes for $50 over invoice, or something like that.

Q Bolling was saying that?

A Yes.

Q Do you remember anything else that was said in that conversation?

A I was trying to get him to pay $90 that he owed us on some parts.

THE COURT: Trying to get Bolling --

TEH WITNESS: That he owed us, yes.

Q Was anything else said on that occasion by anyone present?

A I don't remember anything else.

Q How long did this conversation take place among the three of you?

A About two minutes.

Q Did Mr. Bolling leave then?

A Yes.

Q Mr. Bolling claims that on this occasion he told you that he was in search of a dealer from whom he could purchase new automobiles. Did he say that?

A No, he did not.

Q Did Mr. English on that occasion say that he was familiar with Nabcor?

A No.

Q Did he make any mention of Multi-Make Auto Sales or General Auto Sales?

A No.

Q Did Me. English state on that occasion in words or substance that if he caught any of his dealers selling to Mr. Bolling or to Multi-Make Auto Sales or to Nabcor or to General Auto Sales he would see that those dealers would not get any more cars?

A No. Your question got involved there and I had to think.

Q Would you like it to be read back?

THE COURT: Read it.

(Question read.)

A No, he didn't say that.

Q Did Mr. English state on that occasion in words or substance that as far as he was concerned Bolling and Nabcor would not get any new Chevrolets?

A No.

Q On the occasion when you saw Mr. English and Mr. Bolling together in your office did Mr. Bolling ask to buy cars from Hamister-Gillogly Chevrolet?

A No.

Q Did he do so at any time as far as you are aware?

A No.

Q At the time this conversation among you and Mr. Bolling and Mr. English took place were Corvettes, new Corvettes, in short supply?

A Yes.

Q Apart from this encounter that you have just described, were you ever present with both Mr. English and Mr. Bolling at any time after Bolling left your employment at Hamister-Gillogly?

A No, I was not.

Q Specifically, sir, Mr. Bolling claims that he encountered you and Mr. English and Mr.

Holstead in a restaurant in a shopping plaza a couple of weeks after the meeting you have described. Was there any such encounter?

A No.

Q Now, sir, I would like to show you a document that has been marked for identification as Defendants' Exhibit D (handing).

Take a moment to look at that, if you would.

(Pause.)

A Yes?

Q Have you seen that document before?

A Yes, I have.

Q In what circumstances did you first see it, sir?

A Well, in the mail that came to us at the dealership.

Q Was that in 1966?

A Yes.

MR. KAPLAN: I offer it in evidence.

THE COURT: Any objections?

MR. PERSON: No.

THE COURT: It will be received.

MR. KAPLAN: I invite your Honor's

attention to page 3, the last paragraph.

(Defendants' Exhibit D was received in evidence.)

xx THE COURT: Did I understand you to say that neither at that particular meeting nor at any later time did Bolling ask to buy new Chevrolets from your company?

THE WITNESS: That's correct.

Q Mr. Hamister, did anybody at General Motors Corporation ever tell you not to sell to Bolling?

A No, sir.

Q Did anyone at General Motors ever tell you not to sell to Multi-Make Auto Sales or to Nabcor?

A No.

Q Did anyone at General Motors ever tell you not to sell to Mr. Strimple or General Auto Sales?

A No.

Q Did there come a time when Hamister-Gillogly began selling automobiles to General Auto Sales?

A Yes.

Q When was that?

A I forget the year exactly.

Q I show you, sir, Plaintiffs' Exhibit 31 in evidence and I ask you if that refreshes your recollection (handing).

A Yes, it does.

Q When did Hamister-Gillogly begin selling automobiles to General Auto Sales & Leasing?

A 1968.

Q At the time Hamister-Gillogly Chevrolet began selling cars to General Auto Sales who operated General Auto Sales?

A Cale Strimple.

Q At the time that Hamister-Gillogly Chevrolet began selling to General Auto Sales were you told that there was any connection between General Auto Sales and Econo-Car?

A No.

Q Were you ever aware of any connection between Econo-Car and General Auto Sales?

A No.

Q Mr. Hamister, you were subpoenaed to testify before a federal grand jury in Buffalo in 1969 in relation to Nabcor; true?

A Yes.

Q Prior to your receipt of the subpoena to testify at that grand jury had you ever heard of any complaint being made to federal authorities or any other authorities by or on behalf of Nabcor or Mr. Strimple?

A No, I had not.

Q Are you still connected with Hamister-Gillogly Chevrolet?

A No, I am not.

Q Why is that, sir?

A I sold my interest in 1973?

Q Is the dealership still known by that name?

A No.

Q What's the name of it now?

A Gillogly Chevrolet.

Q Do you presently have any business connection with Gillogly Chevrolet?

A I do have a mortgage on the property. I don't have a business connection.

Q Any other connection besides the Mortgage?

A No.

Q Do you know that Gillogly Chevrolet is a defendant in this case?

A Yes.

Q Do you have any financial interest in the outcome of this case?

A No, I do not.

Q What is your present occupation?

A I have a greenhouse and a florist shop.

Q Does it have any business connections with General Motors or Gillogly Chevrolet?

A I have the car serviced there a couple of times.

Q Anything else?

A No, sir.

Q You have met with me on orders from my office twice before today?

A Yes.

Q I interviewed you in Buffalo some time ago and last night?

A Yes.

Q General Motors is paying your expenses in connection with your traveling here to testify?

A Yes, that's right.

MR. KAPLAN: No further questions, your Honor.

CROSS EXAMINATION

BY MR.PERSON:

Q Did Mr. English have a reassignment of duties some time up to 1973?

A Yes, I believe he did.

Q Do you recall approximately when?

A No, I don't.

Q Do you know who --

THE COURT: Isn't he going to be on the stand? Can't you ask him?

Q Did you ever accept any orders from General?

A Any orders from what?

Q General Auto Sales & Leasing.

A Yes, we did.

Q When did this first occur?

A In 1968.

Q Did you submit these orders to the factory?

A Well, if they were to be ordered we did; and if they were out of stock, we had them in stock.

Q In what form did you obtain orders from General during this time?

A Myself?

Q Did your company produce documents in this case?

MR. KAPLAN: That's a matter of record.

THE COURT: You must know that.

Q You did produce records in this case?

A Yes.

Q Did you yourself search for the documents?

A Yes, I did.

Q Do you recall whether you found any --

THE COURT: Were these documents produced to you?

MR. PERSON: Yes.

THE COURT: You ought to have at your command those documents. I'm not going to expect this witness to remember what was in the documents produced.

Q I don't see any documents at all that reflect the acquisition of any of the General cars from General Motors. Can you tell me why no such documents were produced?

A I don't believe I ever made any attempt to find such documents.

Q Do you know of the name Econo-Car was used in connection with those orders to the factory?

A They would not have been.

Q Why wouldn't the name Econo-Car have been used?

A These were General Auto Sales & Leasing cars.

Q Have you done any business with Econo-Car?

A Yes.

Q Does Econo-Car have a fleet certificate number?

A Yes.

Q Does General Auto Sales & Leasing have a fleet number?

A Yes, they did.

Q Do you remember what the number was?

A No.

Q Have you ever communicated with the factory concerning a fleet certificate number possessed by General Auto Sales & Leasing?

A Yes.

Q Whom did you talk with?

A I wrote them a letter.

THE COURT: We have that in evidence, Exhibit FF.

Q Did you make application for that number?

THE COURT: Mr. Person, you have an exhibit here. This is a letter signed by this man. It's in evidence.

MR. PERSON: It does not say the fleet number.

It's Mr. Hamister's statement that these were --

THE COURT: Whatever it says, it says.

MR. PERSON: I don't know if the factory issued General a fleet number or not. I was inquiring about that.

Q Did you request the factory to issue a fleet number to General?

A Yes, I did.

Q Did you see any evidence of the issuannce of a fleet number ot General?

A I don't remember a number particularly. It seems to me we had a letter that said they were approved.

Q Can you tell me when this occurred?

A No, I can't.

Q Was it August 6, 1968 or thereabouys, approximately?

A I don't remember.

Q Did you have a written agreement concerning the sale of your dealership?

A Yes.

Q Was it prepared by an attorney?

A Yes, it was.

Q Did it disclose the existence of the Nabcor action to the purchaser?

A The purchaser was my partner who was in the business with me, Mr. Gollogly.

Q He was aware of the lawsuit?

A Yes.

Q Did you read the agreement?

A Yes.

Q Do you know if there was any indemnification agreement relating to this or any other lawsuit?

A I know there is not.

Q Have you talked with Mr. Gillogly con-

A I did not attend regular meetings.

Q Did you attend any irregularly?

A No.

Q Did you have any discussions with anyone during 1967, any other members of the DABA, concerning Nabcor generally or any other Nabcor franchisee?

A I may have.

Q Did you receive the BADA bulletin dated in September of 1967 --

THE COURT: Show it to him. It's Exhibit 310.

Q I show you Exhibit 310.

(Pause.)

Q Look at the second page, about two-thirds of the way down.

THE COURT: First of all, do you recall seeing that?

THE WITNESS: Yes.

THE COURT: Help him out, Mr. Person. What'S the language you want him to pay attention to?

Q "We cannot for the life of us" -- see that?

A Yes.

Q Do you recall having seen this bulletin before?

A Yes.

Q When was the first time you saw it?

A End of September, 1967.

Q Was it mailed to you by the Buffalo Automobile Dealers Association?

A Yes.

Q Did you ever discuss this bulletin with Mr. English?

A No, I did not.

Q Any other employee of GM?

A No, I don't think so.

Q Any other dealers?

A I don'- recall, no.

Q Do you own any interests in any automobile dealerships right now?

A No, I don't.

Q When was the last time you owned an interest in a dealership?

A 2973.

MR. PERSON: I would like to mark as Exhibit 562 a copy of various car order forms produced by Clements-Gillogly.

THE COURT: I thought they were in evidence.

You don't object?

MR. KAPLAN: No.

THE COURT: 562 is received in evidence.

xx (Plaintiffs' Exhibit 562 for identification received in evidence.)

BY MR. PERSON:

Q How long were you with Clements-Gillogly Chevrolet?

A I started in 1950.

Q Was there a fleet agreement at that time?

A I don't remember.

MR. PERSON: No further questions.

REDIRECT EXAMINATION

BY MR. KAPLAN:

Q You said, Mr. Hamister, that you applied to General Motors for a fleet certificate for General Auto Sales.

I show you Defendants' Exhibit FF and ask you if that is the application that you referred to?

A Yes.

THE COURT: Is that in evidence?

MR. KAPLAN: It is, your Honor.

Q You said there was a response to this request, sir.

I show you Defendants' Exhibit II and ask if that is the response to which you referred on cross?

A Yes, it is.

MR. KAPLAN: No further questions.

RECROSS EXAMINATION

BY MR. PERSON:

Q Did you have any discussions concerning a filling out of the request for a fleet user's certificate with the zone concerning General, this application for a fleet certificate for General?

A I don't remember that.

Q You don't recall seeing any request for a fleet user's certificate?

A No, I don't.

MR. PERSON: Nothing further.

THE COURT: You may step down.

(Witness excused.)

ROBERT G. ENGLISH, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KAPLAN:

Q Mr. English, you are employed by the Chevrolet Motors Division of General Motors, true?

A Yes.

Q Your present position is district manager for the Buffalo zone of Chevrolet, true?

A That is true.

Q You have been employed by the Buffalo Chevrolet zone office since 1957?

A True.

Q You were initially employed by the Buffalo zone of Chevrolet as senior clerk?

A Correct.

Q In 1959 you became a district manager?

A That is true.

Q You remained a district manager until 1971?

A That is also true.

Q Would you describe for us the duties of a district manager in Chevrolet in 1967?

A Well, the duties of a district manager basically were to make dealer contacts, on a regular basis, and to sell cars and trucks and parts and accessories.

That is usually begun with a sales and profit forecast to determine how many cars and trucks dealers need to break even.

That having been done, you do a used car forecast as well to determine how many used cars that he would probably have to sell in order to accomplish the new car and new truck forecast.

Then basically in 1967, we also did a parts and accessories order with each dealer.

Q As district manager for Chevrolet in 1967, did you have occasion as a regular part of your duties to call on dealers who were not selling Chevrolets?

A No, the dealers in the district to which I was assigned were all exclusive Chevrolet dealers.

Q As the district manager in 1967 did you have authority to determine how many new automobiles a dealer could get from Chevrolet every month?

A No, I did not.

Q Did you at that time have the authority to terminate a dealer's franchise?

A I did not.

Q Did you have the authority to decide that a dealer's franchise would not be renewed?

A No.

Q What, sir, was the relative responsibility of the district manager in the Chevrolet field office in 1967?

A Well, it was the lowestechelonof management in General Motors and still is, in fact.

I was promoted district manager from senior clerk.

Q I show you two documents marked for identification as Defendants' Exhibit B and I will ask you to take a look at those.

First of all, looking at page 1, have you seen this document before?

A Yes, I have.

Q What is it?

A It is a letter to all Chevrolet division personnel relative to the final judgment in the Los Angeles discount case and on page 2 there is a receipt of the final judgment.

Q Would you turn to page 3 of Defendants' Exhibit B. It also has Exhibit F on it.

A Yes.

Q Have you seen that document before?

A Yes.

Q What is that?

A That is the final judgment entered August 18 of 1966 in the United States of America --

THE COURT: We know what that is.

Q Mr. English, did you receive the two documents which constitute Defendants' Exhibit B in 1966?

A Yes.

Q Did you read them?

A Yes.

MR. KAPLAN: I offer them in evidence.

THE COURT: Any objection?

MR. PERSON: No, sir.

THE COURT: Defendants' Exhibit B is received in evidence.

(Defendants' Exhibit B for identification received in evidence.)

Q I show you Defendants' Exhibit D in evidence and ask you to take a look at that.

You received that at the same time you received Defendants' Exhibit B, is that right?

A That is correct.

Q Did you read it at the time?

A Yes.

MR. KAPLAN: That is in evidence, your Honor.

Q Finally, I show you a document marked as Defendants' Exhibit C.

That, sir, is a receipt and acknowledgment of Defendants' Exhibit B and which you signed in August of 1966, true?

A That is true, yes.

MR. KAPLAN: I offer Defendants' Exhibit C in evidence.

THE COURT: Received.

xx (Defendants' Exhibit C for identification received in evidence.)

2 Q Mr. English, was Hamister-Gillogly Chevrolet among the dealers on whom you called regularly in 1967?

A Yes, sir.

Q Did you then know Donald Bolling?

A I did.

Q Under what circumstances did you first meet him, sir?

A Well, I met him in the sessions that he was a salesman as I would have met any salesman. I normally made it my practice to meet all the salesmen and in every dealership.

Q Did you know Mr. Hamister was a vice-president of Hamister-Gillogly Chevrolet?

A Yes.

Q Did there come a time when you saw Mr. Bolling in Mr. Hamister's office in 1967?

A Yes, there was.

Q Was Mr. Bolling still employed by Hamister-Gillogly at that time?

A I don't believe so.

Q How did it come to pass that you saw Mr. Bolling at Hamister-Gillogly on that occasion?

A It came to pass that I was at the dealership and I was performing the sales and profit forecast and projections that I spoke of earlier.

During this conversation with Ollie, as I was attempting to make a sales pitch, so to speak, for the parts and accessories that they were expected to sell each and every month, Dick Bolling stuck his head in the door.

Q Was the meeting prearranged?

A No, it was not.

Q Who was present with you and Mr. Bolling and Mr. Hamister, anyone else?

A It was Mr. Bolling and Mr. Hamister and myself.

Q Do you know Gary Kuhaneck?

A Yes.

Q Was he there on that occasion?

A No.

Q Do you know Richard Holstead?

A Yes.

Q Was he there on that occasion?

A No, not to my recollection.

Q There was some conversation on this occasion when you and Mr. Bolling and Mr. Hamister were together, is that right?

A Yes.

Q Would you tell us everything that you can recall that was said among you and Mr. Bolling and Mr. Hamister?

A Well, I was finishing up some of the details of the projection and Mr. Bolling made the comment that he could Corvettes or attempting to get Corvettes or desired to get Corvettes or had the ability to get Corvettes for $50 over invoice.

Of course, that kind of tweaked my imagination and I said, "That is ridiculous because there has been a flyer sent out by Palmyra Motors in Palmyra, New York.

THE COURT: Excuse me, would you read that answer, please?

(Answer read.)

A That flyer indicated that Palmyra Motors desired to buy past model Corbettes, that is 1966 models, for $250 over invoice and current model Corvettes, which were 1967, he was paying $500 over invoice.

So I pointed out to Mr. Bolling that is ridiculous since it would obviously be the situation that the dealer would want to sell Corvettes to Palmyra at $500 over and I was assured that he certainly wouldn't be able to buy them at $50 over.

Q Were Corvettes in short supply at that time that the conversation took place?

A They certainly were.

Q What if any response did Mr. Bolling make to your remarks that it was ridiculous?

A I don't really recall his response.

Q From what you have just related, was there any other conversation while Mr. Bolling was present on that occasion?

A I don't recall any further conversation.

Q Do you remember what, if anything, was said before Mr. Bolling said he could get Corvettes for $50 over invoice and after he arrived?

A Mr. Kaplan, would you repeat that question?

MR. KAPLAN: Mr. Reporter, please.

(Question read.)

A I don't have any recollection of any conversation at that point.

Q Anything else said in that conversation at all that you remember?

THE COURT: He already answered that.

Q How long was Bolling present on that occasion?

A , I would say about five minutes.

Q What did he do after this conversation took place, if anything?

A It is my recollection that he left.

Q Did you on the occasion we have just been discussing in Mr. Hamister's office state that you were familiar with Nabcor or Multi-Make or General Auto Sales?

A I wasn't familiar with it until Mr. Hamister mentioned that Mr. Bolling had -- after Mr. Bolling had left, Mr. Hamister told me that Mr. Bolling had taken on a franchise and that was the only time I became familiar with it.

Q Did you on this occasion in Mr. Hamister's office say either in words or in substance that if you caught any of your dealers selling cars or doing business with Nabcor or General Auto Sales or Mr. Bolling or Multi-Make, that the dealers wouldn't get any more new cars?

A No, I did not.

Q Did you on that occasion state either in words or in substance that, as far as you were concerned, Bolling or Nabcor or General Auto Sales or Multi-Make, wouldn't get any new cars?

A No, I did not.

Q Mr. Bolling testify that shortly after the occasion when he saw you in Mr. Hamister's office, he met you and Mr. Hamister and Mr. Holstead in a restaurant and you told him you better not catch any of your dealers selling to him. Was there any such meeting?

A Not that I can recall.

Q Did you ever say any such thing to Mr. Bolling?

A I did not.

Q Did you tell him that you would make it tough for him to get cars at any time?

A No, I did not.

Q Have you ever seen Mr. Bolling again since the occasion in Mr. Hamister's office?

A No.

Q Did you ever tell anyone at Hamister-Gillogly Chevrolet not to deal with Mr. Bolling?

A No, I did not.

Q Or Nabcor?

A No.

Q Mr. Mr. Strimple?

A No.

Q Or General Auto Sales?

A No

Q Or Multi-Make?

A No.

Q Were there regular meetings of the personnel of the Buffalo Chevrolet zone during 1967 and 1968?

THE COURT: Mr. Kaplan --

MR. KAPLAN: I have only a few questions.

THE COURT: Mr. Person has to have cross, right?

MR. PERSON: Yes, your Honor.

THE COURT: I am very sorry, but if I had known this earlier I would have let you put on your witnesses, and I had no idea that we had two people that had to get to Buffalo tonight. I have an appointment uptown and I just have a deadline and I am late already, so I am afraid he will just have to stay over.

How much cross do you have?

MR. PERSON: Maybe 10 minutes.

THE COURT: I just can't really do it.

MR. KAPLAN: Your Honor, in view of what Mr. Person has put in already I could terminate at this point with the direct.

THE COURT: Try to finish your cross.

CROSS EXAMINATION

BY MR. PERSON:

Q Could you list the dealers that were under your jurisdiction or responsibility during 1967?

A Yes, I think I can.

THE COURT: Can't we get that by stipulation?

MR. KAPLAN: It is in the deposition.

MR. PERSON: Fine.

Q Did any dealer ever speak with you about General, Multi-Make, Nabcor or any Nabcor franchisee other than what you have testified today?

A Not to my recollection.

Q I would like to show you Exhibit 310, the BADA bulletin of September, 1967.

Are you familiar with that bulletin?

A Yes, I am.

Q When did you first see it?

A Well, I believe it is when my deposition was taken was when I first saw it or at --

Q You never saw it before that time?

A Not to my recollection.

Q Did anyone ever communicate with you, any GM official, concerning this bulletin?

A If you mean by GM official the zone manager?

Q Yes, did he?

A He spoke from the podium at an organization meeting in which he read from that bulletin.

Q Even though you hadn't seen the bulletin it had been read to you at least in part?

A In part.

Q When did that occur?

A It could have been November or December of 1967 or maybe even been in January of 1968. I really can't recall.

Q Did you testify earlier on the 1st of the month?

A It would have been either the 1st of the month or the last of the month. Since every organization meeting took place in the first few days of the month or the last few days.

Q Was it Mr. Womack who spoke?

A Yes, it was.

Q What did he say?

A He made reference to some of the verbiage in that bulletin and told us that we were not to discuss this with any dealers since there might be litigation in the future.

Q Was it your understanding that Nabcor or General fit within Paragraph 4(b) of the injunction, the copy of which you have said that you read shortly after it was received?

MR. KAPLAN: I object to that. The witness really is not an antitrust lawyer.

MR. PERSON: I would like to know if he felt --

THE COURT: Let's show it to him.

MR. PERSON: It is 4(b) on my exhibit.

MR. KAPLAN: Page 6 of Defendants' Exhibit B.

THE COURT: Let's move along to this. I don't think it is terribly helpful.

What is your question now?

Q Was it your understanding, did you have an understanding, whether Nabcor or General fit within this paragraph as a person or class of persons engaged or desiring to engage in selling or offering for sale automobiles including but not limited to discount houses or referral services?

A Yes, I would think that Nabcor and General Auto Sales would have fit in that classification.

Q You believed that back in 1967?

A Yes.

Q Did Mr. Womack suggest that might be true?

A That is true.

Q During that meeting?

A Yes.

Q Have you ever been consulted concerning the evaluation of the franchise of a dealer?

A I don't know for sure if I understand your question.

Q Do you know what a dealer evaluation and dealer performance under the franchise agreement is?

MR. KAPLAN: If your Honor please, we are now off in the realm of practices again. Mr. Person could stick to the --

THE COURT: All right, the objection is overruled.

Do you understand the question?

THE WITNESS: I am not certain that I do, your Honor.

THE COURT: Are you ever consulted in an evaluation of a dealer determining something about his franchise, and I take it evaluation by General Motors?

THE WITNESS: As district manager, no, you are not consulted on that.

Q Do you supply any information on which evaluation may be made in part?

THE COURT: How would he know that?

Do you supply some information to General Motors in the course of your work?

THE WITNESS: Yes.

Q Reports?

A Yes.

Q Do they go into the files of the dealer?

THE COURT: The dealer?

MR. PERSON: The files maintained by GM relating to each franchisee.

A They might, yes.

THE COURT: Anythint else?

Q Do you have the closest connection with the franchised dealers for which you have responsibility of any GM official?

THE COURT: That's not going to help me. That is not going to help me. The question is what he did.

MR. PERSON: I wanted to see --

THE COURT: Please go on.

MR. PERSON: I'm just about finished.

Q You worked for GM for 20 years?

A Nineteen.

Q Do you have any contract for employment with GM?

A No. There is no contract.

Q Could you be terminated at will?

A I would suppose.

Q Is there any pension plan?

A Yes. There is a pension plan.

Q Covering you?

A Yes.

Q Do you have any vested rights in it right now?

A Yes.

THE COURT: I assume he would like to keep his job.

MR. PERSON: I'm done.

MR. KAPLAN: No redirect.

Thank you, your Honor.

(Adjourned to October 14, 1976 at 10:00 a.m.)

MR. PERSON: I would like Mr. Kaplan to be at least aware that my arguments are, and the purpose of the introduction is, set forth at these pages.

THE COURT: He's on notice of that.

Let's go ahead.

MR. KAPLAN: Plaintiff rests subject to that.

THE COURT: Subject to the documents that were referred to yesterday, they are still open.

MR. KAPLAN: I call Mr. DiSimone to the stand.

THE COURT: Exhibit GGG is received.

(Defendants' Exhibit GGG was received in evidence.)

ROBERT M. DiSIMONE, called as a witness by defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KAPLAN:

Q You have been retired since 1974, is that right?

A Yes.

Q Prior to your retirement you were employed by General Motors for 37 years, is that right?

A That's right.

Q In December of 1967 what was your position at General Motors?

A I was regional director in the fleet and government sales section on the marketing staff.

Q For what region were you the director, sir?

A The eastern region at Bala-Cynwyd, Pennsylvania.

Q That's near Philadelphia?

A Yes.

Q How many employees were there in the Philadelphia office of the fleet and government sales section in 1967?

A Two, myself nad my secretary.

Q Did you in 1967 know a man by the name of Robert Berg?

A Yes.

Q Was he in the fleet section at General Motors?

A He was in the fleet and government sales section in Detroit.

Q Do you remember what his position was

at the time?

A He was manager, rental leasing and commercial.

Q As regional director in 1967 what were your duties?

A Well, I administered the General Motors fleet certificate in that area. I contacted all fleet accounts in that area and I maintained records on all fleet accounts in that area.

Q Did you have any function with respect to gathering marketing information relating to fleets?

A Yes. I also reported to Detroit on any activities that I came upon that were in force by our competitors.

Q Did you know in 1967 whether General Motors had plans under which they paid fleet allowances with respect to cars sold to certain fleets?

A Yes.

Q Did you have anything to do with administering those fleet plans that provided those allowances?

A No, sir. They were administered by

the division.

Q Did the automobile divisions of General Motors have their own fleet staffs?

A Yes, all except Cadillac. Cadillac had no fleet staff.

Q What were the functions of the divisional fleet staffs?

A They administered their own fleet programs and they were responsible for the sales to the fleet accounts in their areas.

Q Did the divisional fleet staffs have any function with respect to the fleet plans under which these allowances were paid?

A Repeat the question.

(Question read.)

A Yes. They would receive the applications for fleet rebate from the dealers and they would process them in the different fleet offices.

Q In 1967 did you know a man by the name of David Speece?

A Yes.

Q Who was he?

A David Speece was the Chevrolet fleet representative in the Philadelphia area.

Q Was he a member of your staff?

A No, sir.

Q Was he a member of the Chevrolet fleet staff?

A Yes.

Q Did you and Mr. Speece both work out of the same location?

A No, sir.

Q Where did he have his office?

A His office was in King of Prussia, Pennsylvania and my office was in Bala-Cynwyd, Pennsylvania.

Q Mr. Speece died some time ago, is that right?

A Yes.

Q Did there come a time in December of 1967 when you and Mr. Speece had some conversation relating to Nabcor?

A Yes.

Q Following that conversation with Mr. Speece did you do anything with respect to Nabcor?

A Yes. I contacted Nabcor with Mr. Speece on December 13, 1967.

Q Did you contact them in person or by

telephone?

A In person.

Q Where did this contact take place?

A In the Nabcor office in Jen[illegible]town, Pennsylvania.

Q On that occasion did you and Mr. Speece meet with anyone at Nabcor?

A We met with Mr. Anthony Maiorana.

Q Who was present?

A Mr. Maiorana and Dave Speece and myself.

Q Was anyone else there?

A No, sir.

Q Would you please tell us what was said on that occasion?

A Well, I explained to Mr. Maiorana that General Motors had what they called a General Motors fleet certificate and it was available to fleet accounts who qualified.

Mr. Maiorana asked me what the certificate did, what good it did him.

I said, "If you have a certificate all of the divisions, the fleet sections of the divisions of General Motors, are notified that you are a fleet certificate holder and you could expect periodic contacts from the fleet people in those divisions.

"Also, you would have an occasional contact from me in the GM fleet section. This would build up a relationship so that we would be doing business on a first-name basis, and we hope in the process through this we would get more business."

Q Was anything else said at that meeting?

A I explained to Mr. Maiorana that all General Motors fleet certificate holders would receive from General Motors Corporstion what we call fleet identification cards. These were for cars that were registered in the name of the fleet certificate holder and this card was to be carried in the glove compartment of each car. It had the serial number of the car on it incidentally to identify it. It identified it as a car that was owned by a fleet certificate holder, and it reminded the dealer that all parts that were used in the repair of that vehicle were entitled to wholesale parts compensation, which the dealer could apply for from his division.

Q What was that, wholesale parts compensation?

A That was compensation that was paid to the dealer for selling the parts to a fleet certificate holder or a fleet account.

Q Was anything said in the meeting on the subject of what qualifications a firm had to meet in order to obtain a fleet user certificate?

A Yes. I told Mr. Maiorana that in order to qualify the account must have registrations of twenty new vehicles a year. That would be a combination of cars and trucks and any make vehicles.

Q Did he make some response to that?

A Yes. He told me that none of his vehicles were registered in the mame of Nabcor, that they were all on lease purchase agreements and they were registered in the names of the individuals that had possession of the cars.

I told him that in this instance he would not qualify for the certificate. I further told him that if they changed their registration policy and registered hte cars in the name of Nabcor or a subsidiary, if they had one, that we could submit the request for certificate to the corporation.

Q Did Mr. Maiorana on that occasion show you a lease purchase form?

A He gave both Mr. Speece and me a copy of the lease purchase agreement.

Q I show you Defendants' Exhibit RRRR for identification and I ask you if that's the lease purchase form that Mr. Maiorana gave to you.

A It is.

Q Was there any discussion at this meeting on the subject of fleet allowances?

A I started to explain to Mr. Maiorana that we had fleet plans in our divisions that would be applicable to both certificate holders and noncertificate holders, and I said that one of the plans had to do with purchase allowances, and he stopped me and he said, "I'm not interested in any rebates." He said, "I am perfectly satisfied with the deals I'm getting from the dealers."

Q Was anything else said that you can recall at this meeting?

A I asked Mr. Maiorana if he had any other offices, and he said that they had an office in Yonkers, New York where all of their records were kept.

There was no further conversation after that.

Q How long did this meeting take?

A I would say between 25 minutes and a half an hour.

Q During the course of the meeting did you ask Mr. Maiorana or did Speece ask him where he was getting Chevrolets or any other cars?

A No, sir.

Q Did anyone in that meeting mention Rohrer Chevrolet?

A No, sir.

Q During the course of that meeting, sir, did either you or Mr. Speece say, either in words or substance, that what Nabcor was doing, and I quote, "was not in conformance with what General Motors felt was legal"?

A No, sir.

Q Did either of you say in words or substance that Nabcor was bootletting?

A No, sir.

Q Did either of you say in words or in substance that Nabcor was not authorized by General Motors to sell automobiles?

A No, sir.

Q Did either you or Mr. Speece say on that occasion, either in words or substance that you or General Motors would see to it that Nabcor would not get any new cars or new Chevrolets from dealers?

A No, sir.

Q Following this meeting with Mr. Maiorana did you have a conversation with Nelson Karney in which the subject of Nabcor arose?

A Yes, I did.

Q What was Mr. Karney's position at that time?

A Mr. Karney was the regional director in the fleet and government sales section on the marketing staff located in New York City in the General Motors Building.

Q How did it happen that you had the conversation with Mr. Karney in which the subject came out?

A I used to converse on the telephone with Mr. Karney quite regularly, just about business matters and activities that were going on in the fleet business. I would talk to him, I would say, once a week, on the average.

Q And the subject just came up in one of those calls?

A We were discussing business in general in this particular conversation, which was approximately about a week after I had contacted Nabcor, and out of the clear blue he asked me, "Did you ever hear of Nabcor?"

I related here of my contact with Nabcor the previous week.

Q What, if anything, did he say in response to that?

A He told me that Mr. Frank Maiorana had been in the General Motors offices in New York and was requesting a fleet certificate and that he had made some statements relative to the fact that the Chevrolet people in the Buffalo area were telling the Chevrolet dealers not to sell to Nabcor.

Q Was anything else said on this occasion between you and Mr. Karney about Nabcor?

A Not that I can recall.

Q What, if anything, did you do after this conversation about Nabcor?

A Well, part of my area was the Buffalo, New York area, and I knew the Chevrolet zone manager in Buffalo, so I called him, a Mr. Womack.

Q Did you also write some memorandum at about this time?

A Yes.

After my contact --

Q Let me show you Defendants' Exhibit O for identification. I'll ask you if that's a memorandum you wrote.

A Yes. This is the memorandum I wrote on December 20th. It's over my signature.

Q When in relation to your telephone conversation with Mr. Karney did you wrote that memorandum? Was it before or after?

A It was after my conversation with Mr. Karney.

MR. KAPLAN: I offer Defendants' Exhibit O in evidence, your Honor.

THE COURT: Any objection?

MR. PERSON: For what purpose?

MR. KAPLAN: For the truth of the matters asserted, and also for the fact that the witness wrote the memorandum. That is among the documents you just wanted to offer, Mr.

Person, I believe.

MR. PERSON: I have no objection.

THE COURT: It will be received.

(Defendants' Exhibit O was received in evidence.)

xx

T4

THE COURT: Can I go back to one thing?

EXAMINATION

BY THE COURT:

Q You said that Mr. Anthony Maiorana told you that cars were on lease-purchase agreements and registered in the name of the individuals having possession.

What did you understand him to mean? What does the term mean, lease-purchase agreements?

A Well, basically it means that they will pay a monthly fee for the use of the vehicle.

Q Who is "they"?

A The user, the one that has possession of the car.

Q He pays a monthly fee?

A Right.

Q Why is the term purchase there?

A Because at the end of the lease agreement the lessee would have an option to purchase the vehicle.

MR. KAPLAN: If I might interrupt and direct your Honor's attention to a document, there is such an option for one dollar.

THE COURT: That is a document.

Q Is this a standard type of lease operation?

A Not what I would consider to be the usual lease for Hertz and Avis and all the leasing companies.

They have either a net lease or what they call an open-end lease and the customer just pays a monthly fee and, at the end of the lease term, the vehicle is returned to the lessor and the lessor disposes of the vehicle.

Q Is a lease purchase agreement used as a form of financing? Is there such a thing as lease financing?

A Yes.

Q I wondered if that is the idea in a lease-purchase agreement?

A No, it is not exactly the same, it is different, because in this case the lessee retains the vehicle and in the other case the vehicle is returned to the lessor who disposes of it.

Q Look, if there is a lease-purchase agreement, let's suppose the retail price of the car would be $3000. Now, the lease purchase agreement would involve normally what term, a year, two years, what?

A Lease-purchase?

Q Yes.

A It could vary, two or three years, I would say.

Q Two or three years. And what would the total amount of the rental amount to?

A I would say it would be the cost of the car to the lessor plus a profit.

In other words, he would figure his cost, let us say $3000, and let's say he wants $400 profit. He would figure the cost of $3400 and then divide by that number of months that the user was going to use the vehicle, and that would be the monthly fee that he would pay.

At the end of 34 months the lessor had the cost of the car plus the profit back and the lessee, in this case, would buy the car for one dollar. Pay one dollar and receive title to the vehicle.

Q Would there be a financing charge normally also?

A Yes, that would be included in it, too.

Q The cost of the car, financing charge, and what you think of as a profit?

A Yes. The difference between that and the other type of lease would be that the lessee would figure out, knowing how long the car was going to be in use, figure out how much approximately he could get for that car when it came back.

Q The lessor?

A Yes.

Q Which is the standard Hertz-Avis kind of thing?

A Yes. And they would figure out -- in either case, incidentally, what they call the open-end or closed end lease --

Q What is the open-end?

A Open-end is when the car is returned and it is disposed of, if they don't get for it what they figured they were going to get for it originally, then the lessee has to make up the difference.

In other words, if he was paying $150 a month, if at the end of the lease they dispose of the car, the lessor could come back and say to the lessee, "You owe me $400 because the car was in bum condition and we didn't get for it what we figured we were going to get for it when we made up your lease figures."

That is right in the agreement.

Q I won't get into that.

THE COURT: Was it your understanding that Nabcor did the lease-purchase type of arrangements?

A Yes, when he gave me the facts and told me he did, that is how they did business, with the lease-purchase plan.

Q Can you tell me this: would General Motors -- I take it General Motors would give a fleet certificate to somebody like Herts or Avis who did the kind of leasing that they do?

A The whole point is they registered vehicles in their names --

THE COURT: Just answer me.

THE WITNESS: Yes.

BY THE COURT:

Q We will take it one step at a time.

A Yes.

Q It would be normal that Hertz or Avis would have the car registered in Hertz's or Avis's name?

A That's right.

Q They would be using the cars?

A Yes, in their business, right.

Q Now, did General Motors give fleet certificates to parties who were doing the lease-purchase kind of thing?

A I would say that some of them did have fleet agreements, but they had combination-type leases.

They had the other lease where they had the cars registered in their name and qualified with those 20 registrations per year.

In this case there were no registrations and we were just having to take somebody's word for it they were in your business. When they are registered we know they are in your business.

THE COURT: All right.

BY MR. KAPLAN:

Q You said that you had a telephone conversation with Mr. Womack?

A Yes.

Q Was that before or after you wrote Defendants' Exhibit O, if you recall?

A That was before, I believe.

Q Did you call Mr. Womack or did he call you?

A I called him.

Q Why did you do that?

A Because I wanted --

THE COURT: I am sorry, I didn't get that, before what?

THE WITNESS: Before I wrote this memorandum.

Q Let me ask a preliminary question.

How long before, if you remember?

A We are talking about hours.

Q Why did you call Mr. Womack on that occasion?

A Because I wanted to find out if what Mr. Karney told me that Mr. Maiorana said, I wanted to find out if that statement was true or not.

Q Which statement?

A The statement that Chevrolet personnel in the Buffalo area were telling the dealers not to sell to Nabcor.

Q Was Buffalo in your territory as regional director?

A Yes, sir.

Q Did you speak with Mr.Womack?

A Yes, I did.

Q What did you say to him and what did he say to you?

A I repeated what Mr. Karney said that Mr. Maiorana said and I asked him if he knew of any instances where this could have happened or did happen.

He said there were no instances where this happened as far as I know, but he did tell me that one small dealer in the Buffalo area was offered an order of 200 cars from a Nabcor agent and he said that he wanted to give it some consideration because he used to get about six or eight cars a month and his facilities were for a dealer who would handle six or eight cars a month.

Q Let me interrupt and ask you who you meant by "he"? Who wanted to give it consideration?

A The dealer.

Q Go ahead.

A After giving it some consideration he returned the order to Narcor saying that he didn't think he could handle it with his facilities and Mr. Womack related the story to me.

2 Q Was there any other discussion in this conversation with Mr. Womack?

A Yes.

Q What was that?

A So somehow or other, and I don't remember how it came up, but the subject of a bulletin that was issued by a dealer's association, that was distributed to dealers, that had reference to Nabcor came up.

Q What was said?

A Mr. Womack said that he had this bulletin and I asked him if he would give me a copy of it.

Q Was anything else said in that conversation that you can remember?

A No, sir.

Q Did you subsequently get a copy of the bulletin from Mr.Womack?

A I did.

Q I show you Plaintiffs' Exhibits 308 for identification and 310 in evidence. Have you seen those before, sir?

A Yes, I have.

Q In what circumstances did you first see them?

A When I received them from Mr. Womack with this note.

MR. KAPLAN: If there is no need to renumber them I offer Plaintiffs' Exhibit 308 in evidence.

MR. PERSON: No objection.

THE COURT: Received.

xx (Plaintiffs' Exhibit 308 for identification received in evidence.)

Q What if anything did you do with the bulletin Mr. Womack sent you, Plaintiffs' Exhibit 310 in evidence?

A I sent that to Mr. R.L. Berg in Detroit.

Q I show you a document which has been marked as Plaintiffs' Exhibit 309 for identification and ask you if you recognize that document?

A I recognize it.

Q Did you write it?

A Yes,sir. I signed it.

MR. KAPLAN: I offer that in evidence.

MR. PERSON: No objection.

THE COURT: 309 is received.

xx (Plaintiffs' Exhibit 309 for identification received in evidence.)

Q After you sent the bulletin to Mr. Berg, what, if anything, happened next with respect to Nabcor?

A I received a telephone call from Mr. Olson.

Q Who was he?

A He was the national director in the fleet and government sales section.

Q Located in Detroit?

A Yes.

Q What did Mr. Olson say and what did you say to him on that occasion?

A Mr. Olson told me he saw the bulletin that I had sent to Mr. Berg.

He said, "What action did Mr. Womack say that he took on that bulletin?"

He said the only thing we have is the bulletin.

I had to tell him at that time that I didn't know, that I would have to find out, and I would let him know.

And he also asked me what other conversation went on with Mr. Womack during that conversation we had about the bulletin.

I called Mr. Womack and I asked him what action he took on the bulletin. He said that he made copies of the bulletin and at what they call an organization meeting, where all of the wholesale men in that zone are together --

Q Let me stop you.

What do you mean by the term "wholesale men"?

A The Chevrolet personnel.

Q Go ahead.

A At that meeting he gave copies of this bulletin to his district managers he said, to keep them advised.

I told Mr. Womack that I didn't think that was a good idea.

He said to me, "If I can't trust my district managers, who can I trust?"

Q Did you tell him why you didn't think it was a good idea?

A Well, I said that perhaps they might not use it properly.

Q What if anything did he say to that?

A He said, "Well, I am going to recontact my district managers and I will make sure that they don't use it improperly."

Q Did anything else take place in this conversation with Mr. Womack?

A No.

Q What if anything did you do next with respect to Nabcor after that conversation?

A I sent a letter to Mr. Olson and I related to Mr. Olson what Mr. Womack told me about the bulletin and I also included in the letter the conversation we had about the statement that Mr. Maiorana originally made.

Q I show you Plaintiffs' Exhibit 339 for identification. I ask you if that is the letter you wrote to Mr. Olson?

A Yes, it is.

Q Is it an accurate account?

A Yes, sir.

MR. KAPLAN: I offer it.

MR. PERSON: No objection.

THE COURT: Received.

xx

(Plaintiffs' Exhibit 339 for identification received in evidence.)

THE COURT: Could we take a short recess?

(Recess.)

Q Did you ever tell any automobile dealer not to sell to Nabcor?

A No, sir.

Q Have you ever heard of a man named John Drury prior to the time counsel asked you about it?

A No, sir.

Q Did you ever have any contact with GMAC about Nabcor?

A No, sir.

Q You receive a pension from General Motors?

A Yes.

Q The pension is not in any way contingent on your testimony here today?

A No, sir.

Q You met with me and Mr. Selander from General Motors on Cape Cod last spring?

A Yes.

Q And you met with us again last night?

A That's right.

Q General Motors is paying your expenses in connection with your traveling here to testify?

A Yes.

MR. KAPLAN: I have nothing else.

CROSS EXAMINATION

BY MR. PERSON:

Q Did you speak with an other person concerning this lawsuit?

A No, sir.

Q How did you first hear of Nabcor?

A The first time I heard of Nabcor was, I would say, in early 1966. Someone mentioned to me that there was an account by the name of Nabcor up in the Moorestown area of New Jersey, and this was just in passing. There was no conversation about it. I never heard of it again.

THE COURT: You are talking about Morristown --

THE WITNESS: Moorestown.

Q Who was the person who told this to you?

A I don't remember.

Q When did you next hear of Nabcor?

A When Mr. Speece -- the day before we made the contact, when Mr. Speece told me he was going to contact Nabcor.

Q Is Moorestown in the territory you had as director of the Philadelphia region of the fleet section?

A Yes.

Q The conversation, the meeting you had with Anthony Maiorana, was on December 13, 1967, is that correct?

A Yes.

Q You heard about Nabcor from Mr. Speece one day before that?

A That's right.

Q How did this communication take place?

A I was talking with Mr. Speece on the telephone and we were talking about business in general. I asked Mr. Speece where he was going the next day, because I used to travel with the divisional people on occasions. He said he was going to contact Nabcor in Jenkintown.

Q Did he say why?

A I asked him why, and he said that he had received an application for fleet rebate from a dealer in the Philadelphia area and that he could not process it because he could not find any record of registrations in the registration books that they used. He was going to go up to contact them to find out how they registered their vehicles.

Q Were you referring to the R. L. Polk registration books?

A Yes.

Q Any other books?

A I don't know what he used other than R. L. Polk. He might have had something.

Q Is there a list of fleet certificate holders?

A Yes.

Q Is that distributed to zone offices throughout the country?

A I am not sure.

Q You have seen a list?

A Yes. It's in the R. L. Polk registration book. They are listed by certificate holders and noncertificate holders in that book.

Q How does R. L. Polk get that information from GM?

A They get it from the individual states.

MR. KAPLAN: I object. The question assumes something.

Q Do they get that information as to who holds a GM fleet certificate from General Motors?

MR. KAPLAN: I would appreciate a foundation as to the witness' knowledge.

Q You have testified that R. L. Polk publishes a list of fleet certificate holders.

MR. KAPLAN: I don't think that's the testimony either.

THE COURT: Start again.

Q You are familiar with a publication by R. L. Polk, are you not?

A Yes.

Q Can you describe what that publication is relating to automobile registrations?

This lists all of the registrations by account name in segments of certificate holders and noncertificate holders.

Q What type of certificate?

A A General Motors fleet certificate.

Q You have seen that in the R. L. Polk publication?

A Yes.

Q Do you know how they obtain the information on who possesses a GM fleet certificate?

A I'm sure they receive it from the General Motors fleet section in Detroit.

Q Did the person in the Moorestown area describe to you what Nabcor was doing, in his opinion?

A No, sir.

Q In what context did the name Nabcor come up?

A I only remember that the name was mentioned in a casual conversation that somebody mentioned there is a company by the name of Nabcor who leases, I believe they said --

Q Was this a significant thing?

A No, no, it was not.

Q You knew of other leasing companies at that time?

A Oh, yes.

Q Nothing was said about reselling of automobiles?

A No, sir.

Q When you talked with Mr. Speece on the 12th of December, 1967 did he mention the amount of money that was involved in the application for a fleet allowance by a dealer in the area?

A No, sir.

Q Did he mention what type of dealer it

was?

A It had to be a Chevrolet dealer.

Q The reason that it had to be is what?

A Because he was a Chevrolet fleet man and they administered the Chevrolet fleet plan so it had to come from a Chevrolet dealer.

Q Did the name Matt Slap Chevrolet come up in the conversation?

A I don't recall that it did.

Q Did the name Rohrer Chevrolet come up in the conversation?

A No, sir.

Q Had you ever visited Rohrer Chevrolet?

A Yes.

Q And Matt Slap Chevrolet?

A No.

Q Was that in your testimony?

A Yes.

Q Did Mr. Speece indicate who, if anyone, had instructed him to pay a visit on Nabcor?

A No, sir.

Q I would like to show you Exhibit 247, a copy of a memorandum dated December 12, 1967.

That's in evidence.

Have you seen this memorandum before?

A I saw that memorandum in the lawyer's office.

Q How long ago?

A That was Mr. Kaplan's office, last night.

Q You can remember having seen it before?

A I never saw it before.

THE COURT: May I see it, please.

(Pause.)

Q Who is Mr. Her Dunham?

A He was the city manager for Chevrolet in the Philadelphia zone.

Q And Mr. Speece was under him, is that correct?

A Yes.

Q Do you know where his office was, Mr. Dunham's office?

A It was in King of Prussia, the same place where Mr. Speece's office was.

Q Were their offices on the same floor of the building?

A It was a one-floor building.

Q Who is Mr. R. Lee Courtney?

A Mr. Courtney -- I don't really know what his title was.

Q I can give you the file from the letter. Assistant manager of fleet sales department.

A Of Chevrolet.

Q Did he work together with Mr. Speece?

A Yes. He would work with Mr. Speece.

Q Do you know if he was over Mr. Speece?

A Yes, he was, inasmuch as he was in the central office and Mr. Speece was a field man.

Q Do you know if Mr. Speece was responsible for Matt Slap Chevrolet?

MR. KAPLAN: I object to the form.

Q Do you know any of the dealerships that Mr. Speece was responsible for?

MR. KAPLAN: That assumes that there was a territory. I would like him to develop a foundation if he thinks that's the case.

Q I don't know whether that wording applies.

Q Did Mr. Speece have any territory in which he operated?

A Yes.

Q Could you describe that testimony, please?

A I am not familiar with his complete territory but it was in the North Philadelphia area and north of Philadelphia.

Q Did that include Jenkintown?

A Yes.

Q Did Mr. Speece discuss with you on December 12, 1967 or the following day, when you went to visit Nabcor, whether he had a conversation with Mr. Courtney or Mr. Dunham?

A No, he didn't.

Q Did he mention that his fleet department was having any problems with Nabcor?

A He did not.

T6

Q Did he mention that Nabcor was purchasing cars from dealers in the area?

A This was obvious because he received application for rebate. The cars had to be sold by a dealer to Nabcor.

Q You didn't ask what dealer?

A No, I didn't. It was of no consequence to me. It was a zone function. It didn't interest me.

Q Have you ever seen an application for a fleet allowance?

A Have I ever seen one?

Q Yes.

A I have seen them.

Q Do you know the name of the dealer making the application for that?

A Yes.

Q Did Mr. Speece have this application in his possession?

A I don't know.

Q When did Mr. Speece die?

A I don't know.

THE COURT: I want to read this again, forgive me.

(Pause.)

Q Did Mr. Speece say that he was instructed to alert any GM dealers in the Philadelphia area concerning Nabcor?

A No, sir.

Q During the conversation with Anthony Maiorana did you ask whether Nabcor was engaged in reselling new automobiles?

A No, sir.

Q Do you know of any leasing company who resells automobiles, new automobiles?

MR. KAPLAN: I don't know what this has to do with this.

A I don't know.

THE COURT: He doesn't know. That is the answer.

Q Did Mr. Speece say that Nabcor was having any difficulties obtaining cars?

A No.

Q Did he mention that any dealers complained about Nabcor obtaining cars from local dealers in the Philadelphia area?

A No, sir.

Q Was Mr. Karney your counterpart in New York at that time?

A Yes, he was.

Q The same position but in New York?

A That's right.

Q He had no responsibility for Buffalo, is that correct?

A That's right.

Q What was the responsibility that you had over Mr. Womack if any?

A None.

Q Did Mr. Karney during this telephone conversation with you refer to any incident involving Don Allen Chevrolet or Mid-Town Chevrolet during late 1966 or early 1967, involving automobiles that Nabcor had ordered through Don Allen Chevrolet?

A No, sir.

Q Did Mr. Karney mention that he had communicated with a Mr. Wasserman, attorney for GM, concerning Nabcor at some time prior to your telephone conversation with Mr. Karney?

A No, sir.

Q Was there any mention of a meeting between Mr. Belcher and Mr. Frank Maiorana?

A No, sir.

Q Have you ever heard the name Frank Maiorana before?

A Yes.

Q When did you first hear of that?

A Mr. Karney told me during that conversation, the week following my contact in Jenkintown that Frank Maiorana had been in the General Motors building in New York --

THE COURT: What you testified to earlier? That is the first time you heard of Frank Maiorana?

THE WITNESS: Yes, sir, that is the only time.

Q In your discussions with Mr. Womack did you ask the identity of the small dealer in the Buffalo area?

A No, sir.

Q Did Mr. Womack volunteer that information?

A No, he just said a small dealer in the area.

Q What was your purpose in calling Mr. Womack again?

A I just wanted to find out if the statement that Frank Maiorana made was true and I was checking with Mr. Womack to verify it one way or the other.

Q Did this have some part of the responsibilities in your position?

A Well, if he had done it, I would have reported it to Detroit.

THE COURT: Done what?

Q To whom?

THE WITNESS: If Mr. Frank Maiorana's statement was correct after Mr. Womack verified it, I would have advised Mr. Olson in Detroit, who was my superior.

Q You felt that would be part of your duties?

A Yes, sir.

Q Did you feel you had any duties to investigate this matter other than just asking Mr. Womack if it occurred?

A No, sir.

Q Therefore you did no investigation other than that telephone call, is that correct?

A That's right. I didn't even report it because there was nothing wrong.

Q Did you ask whether the 200 automobiles for that small dealer were supposed to be resold in the area serviced by that small dealer?

A No, sir.

Q Did that fact make any difference to you whether they would have been sold there or not?

A No, it never came up. It wasn't a factor.

Q You didn't believe there might be any interference charging on the part of GM with a dealer desiring to sell 200 cars at one time or did you feel there may be an interference?

MR. KAPLAN: I object, because it assumes the dealer wanted to sell, and the testimony is to the contrary.

THE COURT: I don't know what you are talking about, about GM interference.

The testimony is he didn't know of any GM interference, so if you want to ask him if he knew about any or learned about that or thought there was any, you ought to do it.

I think your questions are confusing.

Q Did you ask the circumstances under which the information presented by the small dealer was made known to the Buffalo zone?

A Mr. Womack volunteered the information to me. He said that is the only instance he knew of where there was an order from Nabcor in the zone that this small dealer had received it and, after reconsideration, returned the order to Nabcor, and he related to me just that way.

Q Receipt of the order by the dealer suggests that the dealer was considering taking the order, does it not?

THE COURT: He said he considered it. He was advised that the dealer considered it and then ultimately turned it back.

Q Did you ask whether General Motors assisted in any way in giving information on which the dealer made a decision to reject the order?

A No.

Q Do you know if General Motors gave any information to the dealer?

A Well, Mr. Womack told me that none of the Chevrolet people in the Buffalo area interfered with any of the purchases being made by Narcor, so it would have included, that one, too, I assume.

Q Did he state whether there had been any communications with the dealer concerning the order prior to the rejection of the order by the dealer?

A He didn't state.

Q Did you ask?

A No.

Q Do you know of any investigation at all anywhere in General Motors concerning Nabcor or any Nabcor franchisee?

THE COURT: This is practically discovery.

Have you taken his deposition?

MR. PERSON: No, I did not.

Q Did you speak with Mr. Olson about any investigation of the charges that Nabcor was making?

A No. The only communications I had with Mr. Olson with regard to Nabcor I have related in my testimony.

Q Did you consider that you were being charged with making an investigation by Mr. Olson or Mr. Berg?

A Not in the sense of a full investigation.

Q To any extent were you asked to make an investigation?

A Well, as I related, Mr. Olson asked me to find out what action Mr. Womack took on that bullentin, and I found that out and replied to Mr. Olson.

To that extent he asked me to investigate.

Q Plaintiffs' Exhibit 310, the Buffalo automobile dealer association bulletin dated September 29, 1967, refers to various Nabcor franchisees and, in addition, refers to Dabs Discount Automobile on page 2 of the bulletin.

Did you make any investigation concerning Dabs?

A I never heard of them.

Q You read the bulletin before?

A Just what was in the bulletin. I had nothing to do with Dabs.

Q But you made no investigation about any other person mentioned in the bulletin other than the Nabcor incident?

A Only what Mr. Olson asked me to investigate.

2

Q Did Mr.Womack ever report to you whether there was any improper use of the bulletin?

A No, sir.

Q Did you ever ask Mr. Womack whether there was any improper use of the bulletin after the investigation he said he would perform?

A No,sir.

Q Exhibit 311 for identification --

MR. PERSON: Do you have any objection to the introduction of that?

MR. KAPLAN: For what purpose.

Q Have you seen this before, Mr. Di Simone?

A No, sir.

Q That was not transmitted to you as part of any mailing by Mr. Womack to you?

A No, sir.

Q Mr. Womack sent you a copy of the bulletin, did he not?

A Yes, sir.

Q The BADA bulletin, but this was not part of it as far as you can recall?

A As far as I can recall, it wasn't.

Q You testified in substance that your office administers the fleet certificate program of General Motors regionally, is that correct?

A Yes.

Q What is the purpose of the fleet certificate?

A Well, the purpose of the fleet certificate is to develop a closer relationship between volume accounts and our divisional people and our corporate people so that we might enjoy more business from them and be in a position to give them better service.

Q Does anyone ever seek a fleet certificate from GM?

A Pardon?

Q Does any organization ever seek to have a fleet certificate from General Motors?

A Do they ever seek?

Q To obtain a fleet certificate.

A Yes.

Q In many cases?

A Many cases.

Q What is the reason for this?

MR. KAPLAN: Objection.

Q Do they state a reason why they seek a fleet certificate?

A Excuse me?

Q Anyone state a reason why they are seeking it?

A Yes.

Q Did any of them ever state they feel that it will make them -- they will be more able to purchase cars from franchised dealers if they possess a fleet certificate?

A No, sir.

Q No one ever said that?

A No.

Q Have you ever learned that Nabcor made that statement to General Motors employees?

THE COURT: Why is this relevant?

MR. PERSON: Did he ever hear it from anybody.

THE COURT: I will allow it.

Q Have you ever heard that?

A No.

Q Mr. Karney didn't tell you that?

A I don't recall him telling me that. I never heard it.

Q Is there any condition that a person must meet in order to get a fleet certificate, other than the number of cars and the way they use the cars?

A They must register them.

Q But is there anything other than mere ownership in the vehicle in the proper way that they must meet, any condition, in order to get a fleet certificate?

A Let me say this: the regional director just submits a request to Detroit for the General Motors fleet certificate.

The central office people, I assume, must go through some formula or something, some checking, because the only thing that we look for in the field is they qualify volumewise and they register vehicles.

We don't issue the certificate in the field, Detroit issues it. So you would have to ask them rather than me.

Q Do you give an initial recommendation?

A Yes.

Q Is your recommendation ever rejected by the fleet section?

A Yes.

Q Fleet certificates are denied even though you have stated that you recommend they be granted?

A Yes.

Q Is the reason for the denial given?

A When they couldn't find sufficient registrations.

Q You found sufficient registrations locally?

A No.

THE COURT: What does this have to do?

MR. PERSON: I would like to find out --

THE COURT: These are other cases?

MR. PERSON: The procedure for General Motors in issuing a fleet certificate, for example.

Q Do you have a requirement that a Dun & Bradstreet report be obtained on the outfit?

A Not in my office.

Q You dont know of any report, though, elsewhere?

A Could be in Detroit.

Q You never talked to anyone about that?

A No, sir.

Q Is the purpose of the fleet certificate to obtain statistics on the number of cars which volume users have registered?

A No.

Q That is not one of the purposes?

A No, it is not the purpose of the certificate, because we can get that information whether he has a certificate or not. It is available from the L.R. Polk registration book.

Q Do you know how orders are submitted to the factory by dealers on behalf of customers possessing fleet certificates?

A No different than -- I would say no different than any other orders for a retail customer.

Q Is the identification that the customer is a fleet purchaser --

A That it is a fleet order? Yes.

Q That means that a fleet -- a person holding a fleet certificate --

MR. KAPLAN: Could Mr. Person, if he insists on going into this, at least develop the witness's knowledge with respect to ordering practices, because so far as I understand he has a staff job in the fleet section and doesn't have anything to do with distributing cars.

Q Does the zone ever call you to ask whether a given customer has a fleet certificate?

A They have, yes.

Q Do you know what a fleet allotment is?

A I don't, I never got involved in that. That is a divisional function.

Q Do you know of any fleet certificates that have been revoked?

A Yes.

Q For what reason?

MR. PERSON: I am trying to establish, your Honor, that the fleet certificate isn't just a tool for General Motors to find out --

THE COURT: Because there's a fleet certificate, and what reasons it might be, the fellow might be passing bad checks.

Q Do you know of any fleet certificate being revoked because the one holding the fleet certificate was reselling sutomobiles?

A Yes.

Q Can you describe when that occurred?

A Back in 1964.

Q Do you know whether any dealers believed that a fleet certificate -- have any dealers stated to you that they believe a fleet certificate is required for them to sell cars on a wholesale basis to a company?

MR. KAPLAN: I object to that.

THE COURT: Sustained.

MR. PERSON: I think this is highly relevant, your Honor, since that is the basis --

THE COURT: You have got to lay a foundation.

Q Do you know what wholesale means?

THE COURT: We all know what wholesale means, but can't you just be more precise?

Q Do you know what a fleet price is?

MR. KAPLAN: Your Honor, I object to it because it assumes there is such a thing. What he may think is a fleet price isn't what we might think a fleet price is.

Q Do you know what a wholesale price is?

MR. KAPLAN: Same objection.

Q Do you know what prices the leasing companies pay?

A It varies all over the lot. Every leasing company pays a different price. Every price is negotiated with the dealer and they do business with different dealers and pay different prices for cars, whatever the dealer agrees to. There is no established price for the fleet account.

Q Have you ever discussed with any dealers their willingness to sell automobiles to a company only if the company possessed a fleet certificate?

A Never.

Q You never heard that?

A No.

MR. PERSON: I have no further questions.

MR. KAPLAN: We don't.

THE COURT: Youmay step down.

(Witness excused.)

T7

pgal

MR. KAPLAN: We call Walter Gray, your Honor.

WALTER J. GRAY, called as a witness by defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KLEINBARD:

Q By whom are you presently employed?

A Mutual Pontiac.

Q Where is that located?

A Brooklyn, 578 Manhattan Avenue.

Q That is GM dealership or is it individually owned?

A Individually owned.

Q So it is correct to say you are not a GM employee?

A That's correct.

Q For how long have you been employed by Mutual Pontiac?

A June 1, 1969.

Q Are you appearing here pursuant to subpoena?

A Yes, sir.

Q Have I indicated to you that you are to be compensated at a reasonable rate for your time today?

A Yes, sir.

Q In the fall of 1966 were you the fleet manager for the eastern region of General Motors, Pontiac Division?

A That's correct.

Q At or about that time did you hear of Nabcor?

A I think it was after I was appointed the fleet manager. Probably in '67 some time.

Q In any event there did come a time subsequent to the time you were appointed fleet manager when you heard of Nabcor?

A Yes.

Q Did you ever have an occasion to meet with anyone from Nabcor?

A Yes, sir.

Q With whom did you meet?

A Mr. Maiorana, Frank Maiorana.

Q Where did that meeting take place?

A In a motel in Yonkers just off the New York Thruway. It sat up on a hill. I don't know the name of the motel.

Q Who made the arrangements for this meeting?

A Mr. Maiorana had called me. It's a little difficult to remember. It's a long time ago.

Mr. Maiorana called me and asked if we could meet and I said yes. He asked if I would come to the motel, to his room, I believe, and I said no. I said I would meet him on the way home. I had to go by there and I said I would give him the courtesy of stopping and meeting him in the lobby. I had never met him before so I explained to him what I looked like.

I met him in the lobby.

Q Just the two of you were present?

A Yes, sir.

Q Was there any discussion before you met Mr. Maiorana as to what the purpose of the meeting would be?

A I had no discussion with him before at all except -- I can't remember, but we might have been introduced in a telephone conversation I had with somebody else. I don't remember. Of course I had an idea that he represented some type of a leasing company and was requesting a fleet certificate.

Q In any event, when you got to this meeting on this particular occasion can you give us the substance of what conversation was exchanged between you and Mr. Maiorana, to the best of your ability?

A I can't remember conversations, but the basis of the meeting was that he was requesting a fleet certificate for his company, which was Nabcor, and my only question was that if he had the proper credentials, meaning by that automobiles registered in that company's name -- I believe at that time that was the necessary item to obtain a General Motors fleet certificate -- and he said he had not any cars actually registered in Nabcor's name.

Q What did you tell him in the light of that?

A That he did not qualify for a GM fleet certificate.

Q Did you say to Mr. Maiorana, "We can't give you a fleet certificate unless you have cars registered in your name and we can't sell you cars; you are bootlegging cars and we can't give you automobiles on that basis"?

A No. As a matter of fact, during that period of time the divisions at GM were going out on a leasing program, a dealer rental program, and we wanted everybody to get cars. The only thing I could have said was that -- again, this fleet certificate comes up and I don't know why because you could get cars without the -- I just said that since he wanted a fleet certificate, that I just could not even submit his name for a fleet certificate because he didn't have the proper identification, which would be registrations of vehicles registered in his company's name.

I never said that -- I didn't sell cars, anyway. I could not influence anyone to sell or not sell them cars.

Q Did you --

A I did not say anything about bootlegging.

Q Did you say you would not sell cars to him?

A No.

Q Did you say you could not give automobiles to him on that basis?

A No.

Q Did you ever tell him that General Motors or any General Motors dealer would refuse to sell automobiles to Nabcor?

A No.

Q Did Mr. Maiorana ever supply you with a list of automobile registrations?

A No,sir.

Q How many meetings did you have with Mr. Maiorana?

A Only one in person, and that was the meeting in the motel lobby that day.

Q Did you have any further communications of any kind with him?

A He must have called me up time after time after time wanting that fleet certificate.

Q Was the substance of the conversations pretty much the same?

A Exactly the same. If he could supply me with ten registrations in his company's name, then I would forward it on to General Motors for a request for a fleet certificate. Since he did not have the registrations, I could not do it.

Q Did you ever tell anyone at Ruckle

Pontiac that they should not do business with Nabcor?

A No, sir.

Q Or that they should not do business with Nabcor if Nabcor did not have a fleet certificate?

A No, sir.

Q Did you tell that to any General Motors dealer?

A I told it to nobody.

Q You were a fleet representative of Pontiac?

A At that time, yes.

Q How long did you remain as a fleet representative for Pontiac?

A Until I left Pontiac in 1969.

Q Roughly June 1, 1969.

A I left May 31st, yes.

Q In that capacity would you have any normal contact with dealers for the other General Motors divisions, Buick, Oldsmobile --

A The only time -- the answer is no. The only dealership I did become involved in with any Chevrolet people was Midtown Buick.

At that time it was Midtown Chevrolet. In going to see the fleet people in Pontiac, because they were in the same office as fleet people for Chevrolet, we hesitated to speak to the other division people for fear of dropping a remark that they might pick up and go after one of our accounts to try to sell cars. We stayed away from the other divisiona and the other dealers.

MR. KLEINBARD: I have no further questions, your Honor.

CROSS EXAMINATION

BY MR. PERSON:

Q Did you speak to Mr. Englert?

A No.

Q Do you know who he was?

A I think at that time he was a Chevrolet fleet representative.

Q And subsequently he worked for Midtown Chevrolet?

A I have not seen or spoken to him in seven or eight years.

Q Did Frank Maiorana ever indicate to you why he wanted a fleet certificate?

A No. This is such a long time ago.

It's difficult for me to get the conversation back. I really only had the one conversation with him.

Q Was there any benefit that you were aware of that Nabcor could obtain as a result of getting the fleet certificate?

A The only benefit that they could have obtained at that time and -- the benefit of the GM leasing program, as I remember it, there was some type of monetary return to a leasing company.

Q Was that an allowance of some sort?

A I think so.

Q A fleet allowance?

A I forget what it was. It's strange because a GM fleet certificate had absolutely nothing to do with that.

Q You didn't ask Mr. Maiorana why he was seeking the fleet certificate?

A No.

Q It iddn't occur to you --

A It psosibly could have occurred. I did not ask. He insisted on a fleet certificate that I could not supply.

Q Has anyone else ever made application to you for a fleet certificate who was not qualified for the fleet certificate or requested a fleet certificate through you?

A I would imagine during that period of time somebody did, but usually when people did go as far as to request a fleet certificate they knew what the ground rules were and they knew they had to have X amount of registrations; and I'm not sure what it was, but it was some registration of the vehicles in that company's name. To try to get a fleet certificate without it or qualify for the reimbursement program would be just kind of spinning wheels.

Q Isn't it true that people qualified for the program even without a fleet certificate?

A Yes.

THE COURT: What program?

MR. PERSON: The fleet allowance program.

Q What was the benefit that these people were looking for by looking for a fleet certificate?

A The only benefit would be if one of the holders leasing cars or daily rental cars or a large company such as Kraft Foods, their car is on the road pulling into a dealership somewhere, that car would get preferential treatment as far as getting a mechanical problem fixed, in and out quickly without tying up their men or cars.

The fleet certificate -- it kind of gave a company a little closer contact with dealerships throughout the country and not just one dealership. When somebody came in with a GM fleet certificate number the dealerships bent a little quicker to take care of that car and get that car on the road.

Q Did United Auto Brokers ever apply to you for a fleet certificate?

A Not to me.

Q Did you ever discuss with anyone in GM whether the fleet certificate was considered by some dea-lers as necessary in order to be able to make purchases for some customers? Did you ever speak with anyone in General Motors about the subject matter of dealers believing that the fleet certificate was required for them to be able to sell cars to some customers?

MR. KLEINBARD: May he have a foundation for that? There is no such testimony.

THE COURT: Overruled.

MR. KLEINBARD: Can this be limited to the scope and time that he was an employee of GM and Pontiac.

THE COURT: We don't know whether there was any such subject matter, but the question is: Did you ever talk within GM about the possibility of dealers thinking that a fleet certificate was necessary for them to sell a customer cars?

THE WITNESS: No. A discussion like that would never take place because it is not necessary. We, as internal people, know you don't need a fleet certificate --

THE COURT: That's enough.

BY MR. PERSON:

Q Have you ever told any dealers that a fleet certificate was not needed by a customer for the dealer to be able to sell a car to a customer?

THE COURT: He has just said --

A Counsel, let me say this --

THE COURT: Have you ever gone and told a dealer, "A fleet certificate is not necessary for you to sell cars to someone"?

THE WITNESS: Of course it's not necssary.

MR. PERSON: That's not responsive.

MR. KLEINBARD: I object to the form of the question. He does not have to go around to --

THE COURT: It is useless.

MR. PERSON: Your Honor, we are contending --

THE COURT: I know what you are contending.

Regardless of whether you think it is a silly statement or not, answer the question: Did you ever tell the dealer such a thing?

THE WITNESS: No.

THE COURT: Proceed.

Q Do you know Mr. Dillon, Robert Dillon?

A Yes.

Q Who is he?

A He owns Ruckle Pontiac.

Q Did you ever have any discussions with him concerning Nabcor?

A Never.

Q Do you know of any person in the Pontiac zone who had a meeting with Mr. Dillon concerning Nabcor?

A No.

Q Do you know whether or not Mr. Dillon or Ruckle Pontiac was attempting to set up an auto brokerage system to sell cars to doctors?

A No.

Q Did you ever attend any NAFA meetings?

A Yes.

Q At one of these meetings did you meet Frank Maiorana?

A Not that I can recall.

Q Did you go to a m4eting in a hotel at 57th and Seventh Avenue?

A That's where the NAFA meetings were.

Q Are you familiar with a fleet agreement?

A I was familiar. I am not now familiar.

Q Could you tell me what the fleet agreement was?

A I have no idea.

MR. PERSON: I have no further questions.

THE WITNESS: It was ten years ago, sir. I just don't know.

MR. KLEINBARD: I have no further questions.

THE COURT: You may step down.

(Witness excused.)

THE COURT: We will take our luncheon recess until 2:15.

(Luncheon recess.)

AFTERNOON SESSION

2.15 P.M.

MR. KLEINBARD: Mr. Lubisco.

NICHOLAS D. LUBISCO, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KLEINBARD:

Q By whom are you employed?

A General Motors Overseas Operations, New York.

Q In what capacity?

A Senior staff assistant, personnel department.

Q Can you tell me approximately how long you have been employed by General Motors in the personnel department?

A 20 years.

Q Can you tell me -- what do you mean by personnel department? Are you in the personnel department?

A Yes, sir.

THE COURT: All right.

MR. KLEINBARD: Of General Motors Overseas, your Honor.

THE COURT: All right.

Q Now, can you tell me what position you held in 1967?

A Staff assistant in the personnel department.

Q Was that of the General Motors Foreign Distributors Division?

A Yes, sir.

Q Can you tell me where that was located?

A 224 West 57th Street.

Q Did you know the late George Zibold in 1967?

A Yes.

Q Can you tell me what his job was at that time?

A He was a junior product distribution specialist.

Q In what particular area of the foreign distribution?

A Single car delivery.

Q I am going to show you four exhibits which I would like to have marked as defendants' exhibits, MMMM, NNNN, OOOO and PPPP.

xx (Defendants' Exhibits MMMM, NNNN, OOOO and PPPP marked for identification.)

xx (Defendants' Exhibit QQQQ marked for identification.)

Q I show you these exhibits and ask you if these are exhibits taken from the personnel files of the General Motors Foreign Distributors Division?

A Yes, they are.

MR. KLEINBARD: I would like to offer them, your Honor.

MR. PERSON: I object to the introduction of QQQQ on the grounds of relevance. It is an application for employment. I don't see what relevance that has.

THE COURT: We have the others, MMMM, NNNN, OOOO and PPPP, which are received.

xx (Defendants' Exhibits MMMM, NNNN, OOOO and PPPP for identification received in evidence.)

THE COURT: Let me see QQQQ.

(Handed to Court.)

THE COURT: What is the relevance of it?

MR. KLEINBARD: Just to establish the date of birth, that is all.

MR. PERSON: I will stipulate the date of birth.

MR. KLEINBARD: Or use it to refresh his recollection.

THE COURT: We will eliminate QQQQ.

Q Will you hold on to these exhibits and then if you need them to refresh your recollection or to answer any of my questions you can refer to them.

Can you tell me what Mr. Zibold's duties were in the single car delivery department in 1967?

A They should be a clerical function type job, handling communications, writing specifications, and that type of stuff, such as a glorified clerk would -- you can call it such, but it had to have familiarity with product.

Q When you refer to product are you referring to automobiles?

A Yes, sir.

Q Now, just what type of paperwork would he do?

A Well, as I say, clerical type functions.

Q But in what connection?

A They might be in connection with writing specifications of orders that came in from overseas and place the orders.

Q Let me put it to you another way. With what aspect of car distribution was the Foreign Distributors Division concerned?

A Overseas shipments, overseas deliveries -- let me explain it, maybe I can explain it better.

Q Take your time, there is no rush.

A Obtaining orders from people in overseas locations and then placing the order with the factory in the United States for delivery to the particular servicemen or something wherever he wanted it. He had the correspondence involved in it.

Q When you say "he" --

THE COURT: We have a terrible noise problem because of the high wind. If you would just sit back so I can hear you and just take it easy and speak more loudly than you normally would and speak slowly.

Everybody has to hear you and now I would like that last answer read.

(Answer read.)

Q By "he," whom are you referring to?

A Referring to Mr. Zibold.

Q Were there various levels of employment in the General Motors Foreign Distributors Division?

A Yes.

Q Can you just give me how they range, the total, without specifying each one?

A They were in level 2 through 8 and then unclassified.

Q The highest was which level?

A Unclassified.

Q What level was Mr. Zibold in in 1967?

A Fifth.

Q Can you tell me either from recollection or by reference to the exhibits that you have in front of you what his salary was in 1967?

A $768 a month or $9216 a year.

Q What connection did Mr. Zibold have, if any, with the procurement of automobiles for the domestic dealer?

A None that I know of.

Q What duties did he have, if any, with respect to the distribution of automobiles in the United States?

A None.

Q What authority, if any, did he have to order cars from the factory for distribution to dealers located in the United States?

A None.

MR. KLEINBARD: I have no further questions.

THE COURT: Cross-examine.

CROSS EXAMINATION

BY MR. PERSON:

Q Was Mr. Zibold's position in 1967 exempt from the requirement of overtime compensation?

A He was reimbursed in that level for overtime.

Q What was the name of his immediate superior?

A I will have to refer to this. Mr. Sherman.

Q The full name?

A R. -- I can't read the middle initial, but the name is Robert Sherman.

Q Is he still employed by General Motors?

A Yes,sir.

Q Have you spoken with Mr. Sherman about this matter?

A No, sir.

Q Do you know anyone who has?

A No, sir.

Q In 1967 what was his title?

A He was probably single car delivery manager at that time.

Q What level?

A Eighth level.

Q Was he the immediate supervisor?

A No, sir, I would not say that. I don't know if he was the immediate supervisor.

THE COURT: I thought you said he was.

THE WITNESS: He was the department manager, so they are all responsible to the department manager through the chain, but there had to be a sixth level gentleman somewhere and a seventh level.

THE COURT: You said his title was department head?

THE WITNESS: Right.

Q Located in the same spot physically?

A In the same area. Mr. Sherman had a private office.

Q But within the same floor of the same building?

A Yes.

Q Do you know what the duties are of a person who purchases cars in a dealership in the United States?

A No, sir.

Q Were all the cars that he ordered made in the United States?

THE COURT: Who ordered?

Q Was it the duty of Mr. Zibold to order cars that were made in the United States but not cars made outside of the United States?

A That could be a possibility. I am not positive on that because we have clients in overseas locations, too.

Q Prior to this position in 1967, do you know what his position was?

A Offhandedly, no.

Q Could you refer to the notes before you or to those exhibits to see what his position was, please?

A It is not related here, but I would have to check, senior clerk at the time, prior to this.

Q Exhibit OOOO, would you please refer to that? Can you tell us what his position was immediately prior to becoming single car delivery?

A That indication is merely a department name change. That is no reference to his classification or identification that way.

Q Did you look at his records before coming here?

A Yes, I have.

Q Did you see on those records what his position was prior to this in 1967?

A I did not notice that, but that would be the area probably.

Q Did Mr. Zibold have any discretion in where he was going to place an order?

A I was not aware of that. I don't know that.

Q Do you know what forms he filled out?

A No.

Q Do you know who he dealt with?

A No, sir.

MR. PERSON: I have no other questions.

MR. kLEINBARD: I have one question.

REDIRECT EXAMINATION

BY MR. KLEINBARD:

Q Did Mr. Zibold place orders or did the customers of General Motors Overseas place orders? You testified on your cross that Mr. Zibold placed orders?

THE COURT: You were really referring to him handling the orders.

A From the clerical aspect. He didn't place the orders.

RECROSS EXAMINATION

BY MR. PERSON:

Q Do you know where Mr. Zibold got the orders from?

THE COURT: He has said that, overseas.

Q Did he get them from the customer or the overseas dealer of GM?

A Overseas customers.

Q The customers would submit an order directly to Mr. Zibold in New York?

A Not to Mr. Zibold. They went through a PX system as I recall it. It might be in Europe or Asia.

Q What's that?

THE COURT: Post Exchange, Army?

THE WITNESS: Yes, and Navy. These were returning servicemen, most of them, at the time.

Q The orders would come in from the Exchange to Mr. Zibold?

A He was doing a clerical job.

Q To the office where Mr. Zibold worked?

A Yes.

Q What did the order look like when he got it?

A I have no idea.

Q You don't know what he did with it when he got it?

A No.

REDIRECT EXAMINATION

BY MR. KLEINBARD:

Q Can you tell me how old Mr. Zibold was in 1967?

A Thirty-years of age.

MR. KLEINBARD: Thank you.

Q Is he dead?

A Yes, sir.

THE COURT: You are excused.

(Witness excused.)

THE COURT: Call your next witness.

MR. KLEINBARD: Mr. Belcher, please.

EDWARD P. BELCHER, called as a witness by defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KLEINBARD:

Q Mr. Belcher, you have been employed by the General Motors Corporation since 1955, is that correct?

A Yes, sir.

Q From September of '65 until January 31st of 1968 what was your job?

A I was staff assistant to the chairman

of the board.

Q From the time you began in the position which you have just described until October 31, 1967 who was chairman of the board of General Motors?

A Frederick G. Donner.

Q From November, 1967 until the end of your tenure in the position in which you have just described, who was the chairman of the board?

A James Roche.

Q Will you tell us what your duties were as staff assistant?

A Well, my preliminary duties were to deal with the general public, and that consisted of visitors, telephone calls, correspondence from the general public. The majority of this consisted of complaints from car owners about their cars or about their dealings with dealers.

Q What function did you have to perform in that connection?

A Passing the complaints along to the proper authorities, either in local zone offices or in the general offices in Detroit.

Q Did your duties include any screening efforts of the various complaints that came in?

A I passed all complaints along without screening them. I exercised some judgment where I would pass the complaint to.

Q Prior to December of 1967 did you have any experience with either the marketing or distribution of automobiles?

A No, sir.

Q Would you explain to the court what your training was up through December of 1967 as far as General Motors was concerned?

A Yes. I began work in the New York treasurer's office as a financial analyst in 1955 and worked in that office as a financial analyst until 1965, September, and then I was moved into the chairman's office.

Q Did there come a time when you heard of Nabcor?

A Yes.

Q Can you approximate for me when you first heard of Nabcor?

A I received a telephone call from a Mr. Frank Maiorana around the middle of December of 1967 asking to see Mr. Donner.

Q What did you respond?

A I told him that Mr. Donner was no longer chairman, that the present chairman, Mr. Roche, was not in New York, but that I would be happy to speak to him.

Q What did Mr. Mairana say?

A Mf. Maiorana said he would like to speak with me and could he have an appointment to have a visit.

Q Did he visit with you?

A Yes. That same afternoon.

Q About how long a visit did he have with you?

A Fifteen or twenty minutes.

Q Can you tell me who was present on the occasion of that visit?

A Just Mr. Maiorana and myself.

Q Did you make notes of your visit with Mr. Maiorana?

A Yes, I did.

Q I show you Defendants' Exhibit K, which I believe has been previously marked on your deposition, and I ask you whether these are the notes you made on the occasion of Mr. Maiorana's visit?.

A Yes.

Q Can you tell me what Mr. Maiorana had to say to you on that occasion?

A Yes. He described his business, the business of Nabcor,as an automobile brokerage and leasing firm. He said he had a number of distributors around the eastern part of the United States, that he obtained cars from dealers for these distributors to sell to the general public.

Q Was there any discussion of any problems that he said he was experiencing?

A Yes. He said that he was having difficulty getting cars. He cited particularly the Chevrolet zone in Buffalo, and he said that General Motors personnel in that Chevrolet office were discouraging dealers from selling him cars.

Shall I go on and describe the rest of the meeting?

Q Yes, if you can.

A He said that his distributors were very unhappy with this situation, particularly in Buffalo, and that they were considering legal action against General Motors.

He then asked me if it would be possible to get a fleet certificate. He felt that this might assist him in his efforts to deal with the dealers and get more cars.

Q What was your response to that request?

A I told him I would refer it to the proper people in Detroit who handled both complaints of the nature he described and the question of fleet certificates.

Q Did Mr. Maiorana tell you the names of any of the individual General Motors personnel, that is, the Chevrolet personnel, or any of the GM dealers in Buffalo with which he claims his organization was having difficulty?

A No. I asked him for specific names and he put me off and said that this was not the time for the details and gave me no details. I didn't press the point.

Q Did he mention the name Robert Enblish to you?

A He did not.

Q Do you know who Robert Enblish is?

A I do not.

Q Did he mention the name George Zibold to you?

A No.

Q Prior to this afternoon did you know who George Zibold was?

A I did not.

A Is everything you know about George Zibold what you have heard in the courtroom just before you testified?

A Just this afternoon, yes, sir.

Q Did Mr. Maiorana tell you that he had previously applied for a fleet certificate through Pontiac?

A I don't recall that.

Q Did Mr. Maiorana tell you that General Motors had traced the serial numbers of cars that had been sold by Nabcor in Buffalo?

A No.

Q Did he mention in that connection Rohrer Chevrolet?

A No.

Q Did he allege that Nabcor had been cut off in New York? I'm now talking about the rest of the state as distinguished from the Buffalo area?

A I don't recall.

Q Did he say that Nabcor had experienced any interference from the Philadelphia zone?

A I don't recall that.

Q Did he refer to any incident at Clements-Gillogly Chevrolet?

A No.

Q Do you know where Clements-Gillogly Chevrolet is located?

A No.

Q Did he tell you that General Motors personnel were attending dealer association meetings in Buffalo or elsewhere?

A No, sir.

Q Did he ask you to furnish a letter for presentation to the General Motors dealers to the effect that Nabcor is allowed to purchase automobiles?

A No, sir.

Q Mr. Belcher, I show you a copy of Plaintiff's Exhibit 310, which is in evidence.. I ask you whether Mr. Maiorana either showed or gave you that exhibit on the occasion of his visit with you (handing).

A No, sir. I never saw this before.

Q When Mr. Maiorana testified on direct

he said that he told you that "The same thing is happening to us," referring to Nabcor, "that happened to those independents in California," and he said that you agreed with that statement, is that correct?

A Well, no. I cannot agree. I never heard of Nabcor before he came to me. I could hardly agree with his statement that Nabcor was like something else.

Q Did you make the suggestion to Mr. Maiorana that a fleet certificate might make it easier for him to procure cars?

A No, sir. That was his idea.

MR. KLEINBARD: At this time I would like to offer into evidence Defendants' Exhibit C which has been premarked and identified by the witness.

THE COURT: Any objection?

MR. PERSON: No objection.

THE COURT: It will be received.

(Defendants' Exhibit K was received in evidence.)

xx Q Was there any discussion of Mr. Maiorana's organization obtaining financing from GMAC during that first meeting?

A No, sir.

Q What, if anything, did you do concerning Mr. Maiorana's request for a fleet certificate?

A I called Herm Statler, director of the sales section in Detroit, and relayed both the complaint about Chevrolet in Buffalo and the request for a fleet certificate.

Q When did you next have any communications with Mr. Maiorana?

A As I recall, it was just the very next day. I got a phone call from him at that time. He inquired about the possibility of GMAC financing for daily,rental cars.

Q What did you say in response?

A I said that I would have someone in GMAC get in touch with him.

Q What, if anything, did you do in response to this request, Mr. Belcher?

A After my phone conversation with Mr. Maiorana I called Mr. Robert Murphy of GMAC and relayed Mr. Maiorana's request to him and asked him to have soemone get in touch with him.

Q Did you make a note of your telephone

conversation with Mr. Maiorana when he called on this particular occasion?

A Yes, I did.

MR. KLEINBARD: I would offer in evidence Defendants' Exhibit L, which has been premarked, which are Mr. Belcher's notes of this particular telephone conversation.

MR. PERSON: No objection.

THE COURT: It will be received.

(Defendants' Exhibit L was received in evidence.)

xx

T3

THE COURT: So we don't have confusion, are you sure this is L? It looks like I.

MR. KLEINBARD: It is L, your Honor.

THE COURT: I will change it.

Q Was there any mention of a Mr. Drury during the course of this telephone conversation?

A No, sir.

Q Do you know a Mr. Drury?

A I do not.

Q Did you have a further meeting as distinguished from a telephone conversation with Mr. Maiorana?

A Yes, I had a meeting shortly after the New Year's holiday. This meeting was more or less a repeat of the first meeting, as I recall.

Q About how long did it last?

A Perhaps 10 or 15 minutes.

Q Did you make a note of your -- did I say there was a meeting as distinguished from a telephone call?

A My recollection is I got a phone call and a subsequent meeting the same day.

Q Right. You got both a telephone call from him a visit on the same day?

A Yes.

Q Did you make a note of your telephone conversation and meeting?

A As I recall, I sent a note to Mr. Sattler to tell him I received another visit from Mr. Maiorana.

MR. KLEINBARD: I offer Defendants' Exhibit N, which is the note he just testified to.

THE COURT: Any objection?

MR. PERSON: No objection.

THE COURT: Received.

xx (Defendants' Exhibit N for identification received in evidence.)

Q Did you have any further communications with Mr. Maiorana?

A No, I think he sent me a carbon copy of a letter that he sent Mr. Karney of our fleet section.

This was perhaps a month or two later.

MR. KLEINBARD: May I have Plaintiffs' Exhibit 358? I believe it is in evidence.

Q I show you Plaintiffs' Exhibit 358 in evidence and ask you if this is the letter from Mr. Maiorana to Mr. Karney of which you got a copy?

A Yes, that is it.

Q Am I correct by the time you received this copy you were no longer the staff assistant to the chairman?

A That's right.

Q Did you take any action with respect to this letter, Plaintiffs' Exhibit 358?

A I think I just passed it along to the man who took my place.

Q Did Mr. Maiorana ever say to you in any of your conversations which you have now testified to that any GM employee had ever told him that Nabcor would have difficulty obtaining automobiles?

A No, sir.

THE COURT: Let me hear that question.

(Record read.)

Q Did Mr. Maiorana ever tell you that Nabcor was not eligible for a fleet certificate if it purchased the requisite number of cars and used them in its business?

A No.

Q Did he ever tell you that Nabcor was a bootlegger?

A No.

THE COURT: Mr. Maiorana?

Q Did he ever tell you that any GM employee said to him that Nabcor was a bootlegger?

A No.

Q Finally, did he ever say to you that a GM employee had told him that Nabcor should not be selling cars?

A No.

MR. KLEINBARD: I have no further questions.

CROSS EXAMINATION

BY MR. PERSON:

Q Mr. Belcher, was the chairman of the board the officer of GM having the highest position in GM?

A Yes.

Q Is this an office where complaints normally were directed by persons outside of General Motors?

MR. KLEINBARD: I object to that.

Q Were complaints directed to this office by members of the public?

A Sometimes.

Q You received these complaints?

A Yes.

Q Did anyone else in the office receive complaints?

A In what office?

Q In your office.

A My secretary, the chairman's secretary may have, but they were giving them to me.

Q Did any threats of litigation ever come in to your office, excluding the Nabcor incident?

MR. KLEINBARD: I object to that.

THE COURT: Sustained.

Q Did you advise Mr. Sattler that Mr. Frank Maiorana had said that the district managers spread the word not to sell cars to Nabcor?

A Yes.

Q What did he say?

A He said they would look into it.

Q Did you receive any report back?

A No, sir.

Q You don't know of any follow through by your office with respect to Nabcor's complaint?

A No follow through.

Q Did you know what a fleet certificate was?

A Not precisely.

Q Did you make any effort to find out?

A No, sir.

Q Did you ask Frank Maiorana why he wanted a fleet certificate?

A Yes.

Q What did he say?

A He thought it would help him buying cars from dealers. I guess he felt it would give him some sort of status.

Q Did you ask him why?

A No.

Q Did he state why?

A Yes.

Q Why he felt that a fleet certificate would help Nabcor?

MR. KLEINBARD: He just said that.

A That he felt it would give him some sort of status in his dealing with dealers.

Q Did he mention any dealer had requested a fleet certificate of Nabcor?

A I don't recall.

Q Are you familiar with the daily rental car businesses?

A Not more than somebody who has on occasion rented a car for a day.

Q Did you ask Mr. Maiorana why he was seeking to go into the daily rental car business?

MR. KLEINBARD: I don't think there is any such testimony by this witness.

MR. PERSON: I would like to offer -- this is Exhibit 300.

THE COURT: He did testify that Mr. Maiorana called and asked about GMAC financing for the daily car rental business, so I will overrule the objection.

Read the question.

(Question read.)

A I don't think I did.

Q Was there any discussion of a fleet certificate at that time?

THE COURT: In that particular telephone conversation.

A About a GMAC?

Q Did Frank Maiorana discuss his desire to obtain a fleet certificate in connection with his statement to you that he was interested in the fleet financing of daily rental cars?

A I don't recall.

Q When were your notes of the visit with Frank Maiorana made?

A The visit?

Q Yes.

A The first visit in December?

Q Yes.

A They were made that same afternoon after or just before I called Mr. Sattler. I don't remember.

Q But not during the meeting itself?

A Not during the meeting.

Q What was Mr. Sattler's position during that period?

A He was director of the Sales Section, which was a section of the marketing staff or distribution staff.

Q Was that over the Fleet and Government Sales Section?

A That is right. The Fleet Section was a part of the Sales Section.

Q Did you communicate the complaint to any counsel for General Motors?

A No.

Q Did Mr. Maiorana mention anything about a grand jury or possible grand jury proceeding?

A I don't think so.

Q Did he mention any complaint possibly by a Nabcor broker to the Justice Department?

A Yes, he did mention that his distributors had made suggestions they might sue General Motors or approach the Justice Department.

Q Did he mention that a distributor might bring suit against General Motors?

A Yes.

Q Did you report that to anybody?

A Mr. Sattler.

Q Did you do that orally?

A Orally, on the telephone.

Q No notes of that, though?

A I don't remember if that is in my notes of the first meeting. It might well be.

THE COURT: Here is Exhibit K (handing to witness).

THE COURT: What is your question?

2 Q Were there any other things you left out from your notes?

A Not that --

MR. KLEINBARD: I beg your pardon? I didn't hear that last.

THE COURT: Anything else left out of his notes.

A I don't think so.

MR. KLEINBARD: I object. He testified to a great deal more.

THE COURT: That remark is not necessary. It is a perfectly proper question.

MR. PERSON: I have no further questions, your Honor.

MR. KLEINBARD: I have no further questions.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Next witness.

MR. KAPLAN: Your Honor, the schedule has run a lot faster than we anticipated and we don't have anybody present at this time.

THE COURT: How many more witnesses do you have?

MR. KLEINBARD: We have approximately ten -- I believe eight. In the light of the testimony here we have cancelled the appearance of one or two witnesses that we thought we may have to use, and that is why we ran short at this time.

THE COURT: Let's see, I think I have a problem tomorrow.

Let us take a short recess and we will be back in a minute.

(Recess.)

THE COURT: I have a suppression hearing in a criminal trial at 2 o'clock. I think what we better plan to do is have a half-day session tomorrow.

Do whatever you can this afternoon.

MR. KAPLAN: What I would like to do is this: There are two portions of two different depositions, both brief, which we had not planned to offer. One we plan to offer because the man is hospitalized --

THE COURT: Go right ahead.

MR. KAPLAN: This is from the deposition of Mr. Bolling at page 113. The references here to Defendants' Exhibit A are to the same document that was marked in evidence as Defendants' Exhibit WW at this hearing.

THE COURT: Translate it as you read the deposition.

MR. KAPLAN: I will do that.

"Q Now, sir, where did you get Defendants' Exhibit WW?

"A From Nabcor.

"Q And you got it from Frank Maiorana?

"A Frank or Tony."

THE COURT: Let me see what that is.

Is that the loose-leaf book?

MR. KLEINBARD: With the All Crest certificate.

THE COURT: Start over.

MR. PERSON: May I raise an objection since we had Mr. Bolling here on this. I am wondering why we are offering testimony in that respect. He was already here. In other words, they had their chance to offer whatever they wanted to offer in this by cross examination, and I think now to open up the record and call for additional information, that's contrary to the whole structure of the hearing.

MR. KLEINBARD: The reason we are offering it now is that Mr. Frank Maiorana on cross raised an issue as to whether or not he had ever given this to any prospective Nabcor franchisee. We found this reference in Mr. Bolling's deposition in particular in this connection.

MR.KAPLAN: In particular, he denied ever using the All Crest fleet certificate.

THE COURT: You will now recall Bolling if Bolling were here?

MR. KAPLAN: That's right.

THE COURT: Where is Bolling?

MR. KAPLAN: Buffalo.

THE COURT: I'll permit it.

MR. PERSON: I would like to have Frank Maiorana testify on that also.

THE COURT: Of course.

MR. KAPLAN: "Q Now, sir, where did you get Defendants' Exhibit WW?

"A From Nabcor.

"Q And you got it from Frank Maiorana?

"A Frank or Tony. I don't remember which one.

"Q And you got it from them prior to your signing of the distributor franchise agreement; true?

"A Not true.

"Q Not true. Was that book or one like it shown to you prior to your signing?

"A Yes.

"Q The distributor franchise, sir.

"A One like it.

"Q And were the contents the same?

"A Yes, they were.

"Q Now, when the other book like Defendants'

Exhibit WW was shown to you prior to your becoming -- I'll rephrase that.

"When the other book like Defendants' Exhibit WW was shown to you, that was done in the course of your discussions concerning whether you would become a distributor for Nabcor; true?

"A True.

"Q And Defendants' Exhibit WW itself was given to you after you became a distributor?

"A True.

"Q And it was to be used by you in selling broker franchises; true?

"A True."

That's all we have from Mr. Bolling's deposition.

MR. PERSON: I move to strike that on the grounds that the testimony is irrelevant to this particular proceeding.

THE COURT: Motion denied.

MR. KAPLAN: Next, your Honor, we offer a passage from the deposition of John P. Lowe of General Motors. We were advised on October 7th that Mr. Lowe, who would have been a witness here, was hospitalized on that day.

"A My recollection, it was a contact from our local newspaper.

"Q Was that the Washington Evening Star?

"A Star.

"Q Mr. Wright?

"A I don't recall the name.

"Q What was said?

"A The contact was in the way of a customer complaint probably due to the amount of time that the customer was waiting to get his product.

"Q You don't recall though?

"A No.

"Q Do you recall that the name Action Line was mentioned?

"A Action Line?

"Q That is correct, is it not?

"A Yes.

"Q Did you see the name Robert F. Wright of Action Line? Do you recall that?

"A No.

"Q Mr. Kaufman of the Washington Evening Star, do you recall that name?

"A No.

"Q Frank Maiorana?

"A No.

"Q Jack Snyder?

"A No.

"Q Mr. Calan?

"A No.

"Q Did you speak with him concerning this incident?

"Q No.

"Mr. Kleipnbard: I believe your question was whether he knew these people.

"Q Did you speak with him concerning this incident?

"A I can't be sure.

"Q Did you speak with anyone at the Washington Evening Star concerning this incident?

"A I spoke with somoone in the Philadelphia zone.

"Q Was Mr. Calan in the Philadelphia zone at that time?

"A I think he was.

"Q Do you recall who you may have spoken with in the Philadelphia zone?

"A No.

"Q Do you recall the position that person

MR. KLEINBARD: May I approach the bench with Mr. Person for a moment?

THE COURT: Do you want this on the record?

MR. KLEINBARD: I don't think so.

(Discussion off the record at the bench.)

MR. KLEINBARD: Mr. Karney, please.

NELSON M. KARNEY, called as a witness by defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KLEINBARD:

Q You have been employed by General Motors for 27 years?

A That is correct.

Q In 1967 and 1968 you were the regional director for the northeast region of GM's fleet and government sales section?

A That is correct.

Q Where was your office at that time?

A At that time it was in the General Motors Building located at 1775 Broadway, New York City.

Q Do you know a Mr. A. T. Olson?

A Yes, I do.

Q Could you tell me what his position at General Motors was in December of 1967?

A He was the director of the fleet and government sales section for the marketing staff, General Motors Corporation.

Q Was he your immediate superior?

A Yes, he was.

Q Turning your mind, if you will, to the month of December, 1967, did you have a conversation with Mr. Olson regarding Nabcor?

A Yes, I did. A telephone conversation.

Q Could you just tell us briefly the telephone conversation?

A Mr. Olson advised me that he had been contacted by a member of management, whom I do not recall, relative to an inquiry about the General Motors fleet user certificate. He asked me to contact a Mr. Frank Maiorana at the earliest opportunity.

Q Following your conversation with Mr. Olson did you meet with anyone from Nabcor?

A I did. I met with Mr. Frank Maiorana.

Q Do you recall how long it was after your conversation with Mr. Olson?

A I believe it was the next day.

Q Can you place the date for me in terms of when in the month of December?

A It was on December 15th of 1967.

Q Who was present at that meeting?

A Mr. Maiorana and myself.

Q Anybody else?

A No, sir.

Q Where did the meeting take place?

A That meeting took place in my office in the General Motors Building.

I am sorry. Do you have a document that might -- I believe I had a memorandum about that meeting.

Q Would you like to look at your memorandum to refresh your recollection as to where the meeting took place?

A Yes.

Q This is Defendants' Exhibit M, which has been premarked. I show you this. See if that refreshes your recollection (handing).

(Pause.)

A Yes. I did err in my statement. It was in his office in the General Motors Building in

New York.

Q At any time in that first meeting with Mr. Maiorana were you joined by anybody else?

A No, sir, we were not.

Q Could you tell me what subjects were discussed at that meeting?

A The meeting started by my statement to Mr. Maiorana that the reason for our meeting was due to his visit with Mr. Belcher of General Motors Corporation.

Following that meeting I had been contacted by Mr. Olson and was requested to meet with Mr. Maiorana.

Following that we discussed the operation of Nabcor, what the business consisted of, his method of operation, and it was during that meeting that he informed me he was having difficulty in the Buffalo area with a Chevrolet district manager, unnamed, and unnamed Chevrolet dealers who were preventing him from acquiring passenger cars.

He stated that he felt that the situation was so serious that it might explode and could lead to court action, and the situation was contrary to the consent decree that had been issued in the

California discount case.

I explained to Mr. Maiorana at that meeting that all General Motors personnel were aware of that consent decree; we are all required to acknowledge that, to read the decree and acknowledge our reading and understanding of that decree.

Q Have you finished your recitation of what took place at that meeting?

A No.

Mr. Maiorana asked for information about the general motors fleet users certificate and what was required to obtain that certificate.

I explained to him the requirements of the certificate, that the company, to be eligible for a certificate, must have a fleet of sufficient size to warrant the purchase of 20 or more vehicles annually.

Mr. Maiorana wanted to know at that time if he met those qualifications, whether I could assure him that he would receive a certificate.

I told Mr. Maiorana that I did not issue the certificate. I did not approve the certificate. I prepared requests, and that was up to our Detroit office, to approve, and therefore I could not give him any assurance that he would or would not obtain the certificate.

Q Earlier in your testimony you mentioned that Mr. Maiorana told you the nature of his business. Can you furnish me with any further detail as to the description of Mr. Maiorana's business as it was given to on that occasion by him.

A He stated that his business was primarily one of a leasing company operating through some 200 brokers that executed a lease document with individuals and that lease document included a purchase option clause at lease termination.

Q During this meeting did Mr. Maiorana refer to any incident at Clements-Gillogly Chevrolet?

A No. Not that I can recall.

Q Did he make any reference to a claim that someone personally had traced automobile registrations to Rohrer Chevrolet?

A No, sir.

Q Did he identify any Chevrolet dealers that he claimed to be involved?

A He did not at that meeting.

Q I show you a document which has been marked as Plaintiffs' Exhibit 210 and headed "Buffalo Automobile Dealers Association Bulletin." I ask you whether Mr. Maiorana gave or showed you that document in the course of his meeting with you on December 15th.

(Pause.)

A I do not recall seeing this document at any time other than today.

Q Did you ask Mr. Maiorana to identify any dealers that were supplying cars to him?

A At that meeting I did not.

Q What action did you take after the meeting with Mr. Maiorana concluded?

A Following that meeting I prepared this document which was a letter to Mr. Olson and gave him the entire conversation as I remembered it on the following day.

MR. KLEINBARD: Your Honor, I would like to offer Defendants' Exhibit M, which are the witness' contemporaneous notes which have been premarked.

THE COURT: Any objection?

MR. PERSON: No, your Honor.

THE COURT: Defendants' Exhibit M

will be received.

(Defendants' Exhibit M was received in evidence.)

xx THE WITNESS: May I complete something? You asked a question that was rather broad. You asked what did I do subsequent to that meeting.

Q I was going to ask you if you did anything else.

Did you do anything else in addition to writing this memorandum, Defendants' Exhibit M?

A Yes. I contacted Mr. Bob DiSimone who was the regional director in Philadelphia. The reason I contacted him is that the location of Nabcor was in Jenkintown, Pennsylvania, and since Mr. Maiorana was requesting information about the certificate I wanted to determine if in fact a request had been instituted through Mr. DiSimone's office in Philadelphia.

Q What did you ascertain with respect to that particular --

A That a request had originated and Mr. DiSimone had made a contact with people from Nabcor but it was not a Mr. Frank Maiorana, it was his broker, and I do not know his name.

Q What happened after these two matters you have just referred to? What was the next event, if you can recall?

A The next event was a meeting with Mr. Maiorana in my office in the General Motors Building.

Q Can you place that meeting in point of time?

A That meeting would be in January of 1968.

Q Can you place it in any particular part of the month?

A January 4th, as I recall.

Q Who was present at that meeting?

A Mr. Maiorana. Mr. Don Fogg and Mr. Maiorana. Mr. Fogg was the Chevrolet fleet manager for that area.

Q Can you tell me what subjects were discussed at that particular meeting in whatever order you recall them?

A The first area of discussion was Mr. Maiorana's allegation that Chevrolet personnel were involved in his difficulties in the Buffalo area. The reason for Mr. Fogg's presence was the allegation included Chevrolet personnel, so I had Mr. Fogg there as a Chevrolet representative.

During that discussion Mr. Maiorana was asked to identify the Chevrolet individuals who were involved, the dealers who were involved, to give names, dates, places, and any particulars relative to his difficulties.

Q What was his response?

A Mr. Maiorana indicated that he did not want to get anyone in trouble, and he was reluctant to provide us with any names because we would probably take punitive action.

Q Did you respond to his comment on that subject?

A I did. I assured Mr. Maiorana it would be difficult for us to proceed on any type of investigation without having full particulars, and he continued to decline to provide any names.

Q What comment, if any, did you make to him with respect to the corporation's taking punitive action?

A That was not the intent of the corporation. We would not be interested in taking punitive action against an employee or a dealer.

Q Did you then move to a different subject?

A Yes. We moved to the General Motors fleet user certificate.

Q Had you brought anything with you to the meeting in connection with the fleet certificate?

A I brought a blank request for General Motors fleet user certificate and used that as a guide to ask questions and obtain information to complete the form in pencil.

Q I show you Plaintiffs' Exhibit 329. I ask you whether this is the application which was blank at the time you came to the meeting and during the course of the meeting was written on by you in response to your questioning of Mr. Maiorana (handing).

A This is the document. It was blank and I completed it during my interview with Mr. Maiorana.

Q Can you just tell us briefly what information you obtained from him at that time?

A Basically it was the name, the location of the firm, whether that was a parent company, whether that location was the home office, who the certificate, if issued, should be presented to, and the president, which would be Mr. Frank Maiorana.

I completed the document by filling out the number of brokers that he had at that particular time, which was 140.

THE COURT: You took the information from Mr. Maiorana and you wrote down those things on that form?

THE WITNESS: That's correct, at that time.

Q Was there a discussion as to the number of company-owned motor vehicles?

A Yes. There were approximately 1000.

Q From whom did you get that information?

A From Mr. Maiorana.

Q There is some writing on the bottom of that exhibit but above the line that says "For division's own use only." Could you explain what that is, because I think unexplained it would be difficult to follow.

THE COURT: Are you saying he told you the company owned 1000 passenger cars?

THE WITNESS: That's correct.

Q Could you just explain for me --

A Under the "Comment" section are 24 months, 15 per cent; 30 months, 30 per cent; 36 months, 55 per cent. That pertains to the lease term. He wrote 15 per cent of his lease for 24 months, 30 per cent for 30 months, and 55 per cent of the leases for 36 months.

T3

MR. KLEINBARD: I would like to offer 329.

THE COURT: Any objection?

MR. PERSON: No objection.

THE COURT: Received.

xx

(Plaintiffs' Exhibit 329 for identification received in evidence.)

Q After you had completed that form did the meeting continue?

A Yes, it did.

Q What subject or subjects, if any, were discussed after that?

A I again asked Mr. Maiorana to provide me with the names of Chevrolet personnel or dealers or any circumstances pertaining to his allegation.

He again refused and stated there were many dealers involved and that a specific was, as I recall, Mid-Town Chevrolet, which was a factory branch at that time.

Q Did you find out anything in particular about Mid-Town Chevrolet as far as -- did Mr. Maiorana tell you anything with respect to Mid-Town Chevrolet?

A They had refused to sell him cars, as I recall. Again, I think I have a document, a memorandum or letter to Mr. Olson covering the details of that meeting. Perhaps that would help me.

Q I will come to that in a minute.

At this meeting did you or Mr. Fogg ask Mr. Maiorana to identify the dealers from whom he was able to buy cars in the Buffalo area?

A We did not.

Q At this time I show you what has been pre-marked as Defendants' Exhibit U, which is a memorandum from you to Mr. Olson, and ask you if this is the memorandum to which you referred a moment ago?

A Yes, this is the document that was prepared.

THE COURT: Are you offering that?

MR. KLEINBARD: I will in a moment. I want to ask a question or two about it first.

Q Do you remember I had asked you what information you could give me about Mid-Town Chevrolet.

Would you look at page 2 of that document and see if it refreshes your recollection as to what the discussion there was with respect to Mid-Town Chevrolet?

A I believe I stated that he said there were a number of people involved, including Mid-Town Chevrolet, Mid-Town Chevrolet-Pontiac to be exact, in New York, that had refused to sell him automobiles.

He advised that he entered into an agreement with the old Don Allen Chevrolet prior to its termination, to purchase vehicles, but when the corporation or the operation changed and became a factory store, Mid-Town refused to sell the vehicles at any price.

He commented on it when he made that allegation. I did in fact pursue the matter with Mid-Town Chevrolet and Mid-Town Chevrolet honored those purchase orders that were placed for 10 passenger cars. At a later date two of the vehicles were delivered --

THE COURT: You are getting beyond the question.

This is something you did after the conversation with Mr. Maiorana?

THE WITNESS: That is correct.

MR.KLEINBARD: I offer Defendants' Exhibit U in evidence, your Honor.

THE COURT: Any objection?

MR. PERSON: No objection.

THE COURT: Received.

xx (Defendants' Exhibit U for identification received in evidence.)

MR. KLEINBARD: I would just like to read two sentences from that, your Honor. In the second full paragraph on the first page it reads:

"Again Mr. Maiorana declined to provide any specific information and added the allegation that personnel of other General Motors divisions were involved and did not want to take the time to name names, dates and places today. He then advised that it would not be necessary to pursue these allegations if Nabcor, Inc. was granted a General Motors fleet user certificate."

Q Do you recall those words, Mr. Karney?

A Yes, I do.

Q You wrote them down immediately after the meeting?

A I did.

Q Now, following this meeting with Mr. Maiorana, what did you do with respect to his request for a fleet certificate?

A The request was typed and a cover letter was attached to the request and forwarded to Detroit for their review.

Q Before you had it typed did you do anything with respect to the fleet request?

A Yes. The original blank document that I completed, I rewrote that in my own hand completing it in its entirety, which was then copied and typed.

Q I show you Plaintiffs' Exhibit 328 for identification and ask you whether this is the rewritten version of the earlier fleet application which you had filled out in the presence of Mr. Maiorana?

A Yes.

Q Did it differ in any respect from the fleet application which you had prepared in Mr. Maiorana's presence?

A There is a basic difference between this in that there are explanations here that are not included in the original handwritten document.

Q Could you just direct our attention to the diffences to which you are referring?

A The primary difference under number of company-ownedvehicles, Item 8, there were no company-owned vehicles, as all of the vehicles were registered in individual names.

On the form it requested a specific company-owned number, and I tried to use that as a means of explaining there were no vehicles registered to this company, they were registered to individual lessees.

Q You so indicated on Plaintiffs' Exhibit 328 for identification?

A I did it by means of an asterisk on Item 8.

MR. KLEINBARD: I offer 328 in evidence, your Honor.

MR. PERSON: No objection.

THE COURT: Received.

xx (Plaintiffs' Exhibit 328 for identification received in evidence.)

THE COURT: Does the footnote read this way, "There are no company-owned vehicles, as they are all registered in the individual name"?

THE WITNESS: Yes, your Honor.

THE COURT: I want to know, was this information which Mr. Maiorana had given you?

THE WITNESS: Yes, at the time.

THE COURT: Let's go back. What did he say on that subject, on the subject of how these -- what if anything did he tell you on the nature and mechanics of the transactions with the individuals, whether they were sold, leased, registered? That whole area, if you could recall as best you can?

THE WITNESS: The vehicles that were delivered by the broker to the individual were delivered under a lease document.

That lease document contained a purchase option clause. The vehicle was actually registered to the individual and not to the firm name.

Your Honor, that is contrary to the normal, what we would normally expect from a leasing company.

BY MR. KLEINBARD:

Q Mr. Karney, when you were filling out Plaintiffs' Exhibit 329 in evidence, which is the handwritten version that you wrote out when you and Mr. Maiorana had your first conference, can you focus on that a minute?

Did you ask him for the total number of company-owned cars?

A I believe I did.

Q He gave you an answer, a thousand?

A A thousand.

Q During the course of that initial conference, did you make inquiry of him as to in whose name those cars were registered?

A I probably did, yes.

Q When you came to write up in your own handwriting the application for the fleet certificate, which is Exhibit 328, you then indicated both Mr. Maiorana's original answer and footnoted or asterisked the explanation with respect to registration, is that correct?

A That's right.

Q I had interrupted you earlier when you were about to say that you did something with respect to this exhibit with your secretary. Perhaps you could return to that point.

THE COURT: The request?

2 Q In the request.

A That document then was provided to my secretary --

Q Plaintiffs' 328 was given to your secretary?

A Yes. The second form that you gave me and the typewritten form was prepared.

Q Did you dictate anything else with respect or give your secretary any other information?

A Yes, there was a cover letter to which that request was attached and the cover letter addressed to Mr. A.T. Olson.

Q I show you Defendants' Exhibit C for identification which was premarked, and ask you whether that is the covering letter which you dictated to your secretary and the fleet user application form which was actually forwarded to Detroit?

A Yes, it is.

MR. KLEINBARD: Defendants' Exhibit T is already in evidence.

THE COURT: Just as an aside before I forget it, is there a record or will there be any record evidence about the number of cars which Narcor or its brokers had sold as of January 4, 1968?

Is there or will there be any record evidence about the form of the transaction whether the customers of the brokers received leases with options to purchase?

MR. KAPLAN: I can give it to you right away. There is an excerpt from Nabcor's answers to interrogatories, which is Defendants' Exhibit XX, which states the number of vehicles they sold.

THE COURT: What else?

MR. NABCOR: If your Honor please, I believe Frank Maiorana did so testify on cross-examination that Nabcor never leased any cars. That is in the interrogatories, and if Mr. Person will concede that now, it will save looking for it.

MR. PERSON: Yes, Nabcor testified they were attempting to go into the lease-purchase business and were unable to because of these activities complained about. The number of transactions of actual sales of cars amounted --

THE COURT: As of January 4, 1968, had Nabcor leased any cars or its brokers?

MR. PERSON: I am unaware of all of the brokers, but Nabcor itself had not and we have not represented there was any substantial number of leases.

We are saying the contrary, they were unable to go into the business they sought to go into.

The number of cars sold in total including all four makes as of January 1, 1968, appears to be slightly more than one hundred.

THE COURT: 119, I think.

MR. PERSON: Yes.

MR. KLEINBARD: Your Honor, you may also recall that we had Defendants' Exhibit RRRR, which Mr. Maiorana testified was a draft of a lease purchase agreement, and they had no forms for the daily rental lease.

THE COURT: Are the forms for the transactions described in the literature,all the mechanics are set out?

MR. KLEINBARD: In Defendants' Exhibit A are you talking about?

MR. KAPLAN: I am not sure what you are referring to.

MR. KLEINBARD: The booklet that was shown?

THE COURT: Which would be useful general information to get if you could find it. I know I went through this at some length at some earlier motion and there is in some of that literature which was used to describe Nabcor with the prospective franchisees, there are forms, proposed forms to be used, and there are the mechanics all spelled out, and I would appreciate getting somebody to dig that out.

MR. KLEINBARD: We will prepare such material for you, your Honor.

In the meantime, you have the answer to your particular question.

THE COURT: All right.

Q After your forwarding of the memorandum and the fleet user application to Mr. Olson in the early part of January, 1968, did you have any further communications with Mr. Maiorana?

A Yes. At the meeting on January 4, Mr. Maiorana was insistent that he have some information by January 10.

As I recall it, at that meeting I advised him that I didn't know what information I would have available, but if he so desired he could call me on January 10.

Q Did he do so?

A Yes, he did.

Q Can you give us the substance of that conversation?

A In general at that time on January 10 I did not have any information to relate to him relative to the status of his request.

Those requests took time and hence I could not, I could take no action because Detroit was in the process of review.

Q Did you make a memorandum of your telephone conversation wiht Mr. Maiorana on the 10th?

A It was a handwritten document, yes.

Q I show you a handwritten document which was previously marked at your deposition and ask you whether this is the document to which you refer.

A Yes, that's the document.

MR. KLEINBARD: I offer it in evidence, your Honor. This is Defendants' Exhibit S.

THE COURT: Any objection?

MR. PERSON: No objection, your Honor.

THE COURT: It will be received.

(Defendants' Exhibit S was received in evidence.)

xx BY MR. KLEINBARD:

Q In Defendants' Exhibit S, Mr. Karney, did you indicate to Mr. Maiorana where you would be for the next few days?

A I believe I did. I believe I told him that I would be in Detroit for a two- or three-day period and would not be back until January 19th.

Q And it is so indicated in that memorandum?

A Yes.

Q When did you next have any communication with Mr. Maiorana?

A I believe it was on January 19th.

Q What happened then with respect to Mr. Maiorana? Did you have a telephone call, a meeting, or what?

A Do you have a document or something that might refresh my memory?

Q I show you Defendants' Exhibit X, which has been premarked. This is dated January 19, 1968. See if that refreshes your recollection as to whether it was a meeting or a telephone call (handing).

A It was a meeting in my office in New York on January 19, 1968.

Q Can you summarize the conversation that took place at that meeting for us?

A Mr. Maiorana wanted to know if the request had been approved or rejected, and I advised him that it was still under consideration by our central office staff.

He wanted an answer by January 23rd because his brother was seeking legal assistance and he had to have some information by January 23rd.

I advised Mr. Maiorana I could not guarantee whether he would have any information by that date or not as it took our Detroit central office some time to process that request.

Q Did you mention anything else as to the manner in which his application was being processed?

A I asvised him it was being processed in the same manner as any leasing company would be processed, like PH and H and Lease Plan. We would obtain a Dun & Bradstreet report on the company.

I think it was at this point that Mr. Maiorana said if Peterson, Howell and Heather were eligible for a fleet use certificate, that he certainly was eligible, because he was also a leasing company; and I advised him that if PH and H was solely a management company, they would not be eligible for the certificate, but they were in fact engaged in leasing and they had vehicles registered in the name of Peterson, Howell and Heather, as did Lease Plan, and that they did in fact purchase sufficient vehicles to warrant the issuance of a certificate.

There was quite a debate at that time,

as I recall it, between Mr. Maiorana and myself about defining certain things, and I advised him that I was not competent legally to discuss definitions of what is a lease and what is not a lease.

Q How did the meeting end?

A I concluded by telling Mr. Maiorana that I would inform my Detroit staff that he needed information by January 23rd, and I did in fact call Mr. George Frink by telephone and made him aware of that request.

MR. KLEINBARD: I would liek to offer Defendants' Exhibit X in evidence, your Honor.

MR. PERSON: No objection.

THE COURT: It will be received.

(Defendants' Exhibit X was received in evidence.)

xx BY MR. KLEINBARD:

Q Did you subsequently receive any instructions from Detroit with respect to the Nabcor application for a fleet user certificate?

A Yes, I did.

Q From whom did you receive those instructions?

A Mr. Olson.

Q What did he tell you to do?

A I provided -- he sent to me a copy of a letter that I was to forward to Mr. Maiorana advising that we needed additional information if we were to proceed with his request, but as it presently stood the information, all the information that was available, the request would be denied.

Q I show you what is in evidence now as Plaintiffs' Exhibit 353. I ask you whether this is the letter which you received from Mr. Olson but under a different date.

A That's correct.

Q It's a letter that was sent at Mr. Olson's direction, a letter you had received from Detroit?

A Yes.

Q You had it retyped?

A Over my signature it was retyped and submitted to Mr. Maiorana.

MR. KLEINBARD: I would like to read into the record the last paragraph.

THE COURT: I have read that.

Q Did you receive a response to your letter of January 31st?

THE COURT: Just so we have some

continuity, the last paragraph is about the charge regarding improper conduct, and he says that in Mr. Karney's view the particulars have not been given.

Q Did you receive a response from Mr. Maiorana?

A Yes.

Q I show you what is Plaintiff's Exhibit 358 in evidence under date of February 7, 1968. I ask you whether this is the response that you received?

A Yes, it is.

Q In any of your meetings or telephone conversations with Mr. Maiorana did he mention the name Robert English?

A Not that I can recall.

Q In any of these meetings or telephone calls did he say anything about a contact with a Mr. George Zibold of GM's Foreign Distribution Division?

A No, sir, he did not.

Q Did he mention communications he may have had with Mr. Zibold's brother-in-law or his brother-in-law's boss, or anybody connected with Mr. Zibold?

A Were there any names?

Q There are no names other than Zibold.

A Not that I can recall.

Q Did he ever say to you that any GM employee had ever told him that Nabcor would have difficulty in obtaining automobiles?

A Not that I can remember.

Q Or did he ever say to you that any GM employee had ever told him that Nabcor was a bootlegger?

A No, sir.

Q Or that Nabcor should not be selling cars?

A No.

Q Or that Nabcor was not eligible for a fleet certificate if it obtained the requisite number of registrations and used them in its business?

A No.

MR. KLEINBARD: Your Honor, I have some questions which I would like to put to Mr. Karney which are really primarily for the record and for your Honor's information, if you care to receive it. That would be questions concerning the fleet user certificate and what it is for and how you get it and so forth. I think there has been evidence in the record. I am perfectly willing to forgo it.

THE COURT: Is this any different from what we have?

MR. KLEINBARD: No, your Honor.

THE COURT: I think we can put it together.

Are you finished? Do you have anything else?

MR. KLEINBARD: Yes. I will skip over that part, however, and go to one other item.

One question on the fleet user certificate, your Honor.

Q Did the fact that a company held a fleet user certificate have anything to do with the allocation of automobiles?

A None.

MR. KLEINBARD: I have no further questions.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. PERSON:

Q When did you first hear of Nabcor, Mr. Karney?

A In December of 1967, as I recall.

Do you have something that might help me.

Q Can you recall what it is that you heard then?

A Probably it was in 1967. I think there was a Mr. Berg who had requested that I make some contact with Nabcor.

Q How was that communication made?

A By telephone.

Q What was said on the phone?

A I was asked to look at the recent issues of the New York Times to determine if there was any solicitation by Nabcor for licensees or franchisees.

Q Did he say why he wanted to know?

A Not that I can recall.

Q What did this have to do with the fleet section?

A I think primarily he was looking for information relative to an employee, Mr. Bud Morrison, who was with Nabcor at that time, and trying to determine whether there was in fact, as I recall the telephone conversation, and I think there is a telephone message memorandum -- you may have something that would help me refresh my memory in total.

Q Do you have any present recollection of that?

A Not specifically, no.

Q Was the fleet section back in 1966 and 1967 part of the marketing arm of General Motors?

A Marketing arm? We were part of the marketing staff of General Motors.

Q And your duties were to try to increase sales for General Motors' products?

A Our duties were not sales responsibilities. We were an information source and an identification source.

Q For what purpose?

A For our divisions who have sales responsibility.

Q So the information you were obtaining was to be used by your divisions in increasing sales?

A In contacting fleet users for the purpose of inducing them to buy General Motors products, yes.

Q But not if the person did not quality in terms of what General Motors required for fleet companies, is that correct?

A No, I don't believe that's correct.

Q If Nabcor was purchasing cars you would be interested in helping Nabcor buy or you would be interested in having Nabcor buy additional GM cars?

A We would be interested in anybody buying GM products.

Q Can you tell me what activities your section did in assisting Nabcor in purchasing cars from GM?

A We have no sales responsibility. That's a divisional responsibility.

Q Did you generate any information that might be used by divisions in assisting Nabcor in purchasing cars?

A Our responsibility was to generate a fleet user certificate. That certificate identified for the division the fleet user and gave them a source of contact with their field organization.

Q And also to identify companies that did not qualify for a fleet certificate?

A Not to identify companies that did not qualify. It was a means of identifying companies that did not qualify. It was a means of identifying companies that did qualify.

Q Do you recall a Nobcar, Inc.?

A I recall a telephone communication that my secretary received relative to a Nobcar, and a memorandum that she prepared. I took no action relative to either of those documents. I did not pursue it. I don't know who Nobcar is.

Q Mr. Owens was your superior at that time?

A What time?

Q Back in 1966.

A I believe he would have been director at that time.

Q I would like to show you Plaintiffs' Exhibit 75 for identification, a letter dated March 29, 1966 (handing).

(Pause.)

Q Do you recall having seen that memorandum of the telephone conversation?

A Yes.

Q Did you ever come across the name Nobcar again?

A Not that I can recall.

Q Did you read that memorandum at approximately the date of the memorandum, back in March of 1966?

A It would be approximately that date. I was in the process of moving from Dallas, Texas to New York and I was in and out of the office at that time.

Q You are unaware of any other communications concerning a so-called Nobcar, is that correct?

A I recall a telephone note from my secretary. It was a "While you were out" message that someone had called about a Nobcar. That's all I recall about that.

Q And the word "Nobcar" came from a telephone conversation, is that correct?

A That's correct.

Q Did you speak with Mr. Owens concerning this Nobcar that offered units below cost?

A Not that I can remember.

Q Did Mr. Owens suggest to you file the message about this in the event Nobcar called the fleet section?

A I don't recall any such conversation with Mr. Owens.

Q Did you hear of a Mr. Menola of Grandway, Inc.?

A Not other than what is in that document.

Q Were you aware that he claims he was offered a franchise to become a new and used car broker for Nobcar?

THE COURT: Why are we calling it Nobcar?

MR. PERSON: This is Nabcor. This is the first time that GM received information about Nabcor over the phone and they thought it was Nobcar.

MR. KLEINBARD: That's an assumption by Mr. Person.

MR. PERSON: This is where Nabcor first appeared.

THE COURT: That's your testimony. Ask him if he ever thought it was Nabcor.

MR. PERSON: He never heard of it before this.

THE COURT: You are not the witness.

MR. PERSON: He has testified --

THE COURT: That he heard of a thing called Nobcar. He recalls a memo about it. He didn't pursue it. He said he had no knowledge. As far as I know, there could be indeed a Nabcor and a Nobcar.

MR. PERSON: He's unaware of any Nobcar other than this information.

THE COURT: Does that memo mention Nabcor?

MR. PERSON: Nobcar.

THE COURT: You ask the witness whether he believes there is any connection or do something. Otherwise as far as I am aware we have a Nobcar and we have a Nabcor.

BY MR. PERSON:

Q Who was your secretary at that time in 1966?

A A Miss Marion Yost.

Q Did you talk with her about whether she attempted to find out where Nobcar was obtaining units?

A I did not.

Q Did you receive any information from her that she attempted to find out where Nobcar was obtaining units?

A As I indicated earlier, the only thing

I was aware of was the document that you just showed me.

MR. PERSON: I would like to offer this defendants' exhibit in evidence. This is 75.

MR. KLEINBARD: I object to it. Right on its face the subject is Nobcar, 273 Park Avenue, and there has never been any testimony that this had anything to do with Nabcor.

MR. PERSON: This document states that Mr. Menola stated he had called Circle Buick in New York and asked them whether or not they would honor a warranty if he should accept the Nobcar franchise. Circle Buick was emphatic in answering no.

I would like to offer this relating to General Motors. This was a division of General Motors and this is contemporaneous with Nabcor.

THE COURT: Is it Nabcor or Nobcar?

MR. PERSON: It says Nobcar.

THE COURT: Was Nabcor located at 273 Park Avenue?

MR. PERSON: No. It had an office in New York City. It was doing the --

THE COURT: Sustained.

We will take a short recess.

(Recess.)

T5

MR. PERSON: I have an exhibit, 74-A, which I would like to show to the witness.

Q It is a copy of a letter from the Greater New York, Long Island and Westchester Automobile Dealers Association, dated October 21, 1966.

Mr. Karney, have you seen this letter before?

A Yes, I have.

Q Can you recall when you saw it?

A No, I cannot.

Q It refers to a fleet agreement on the first page, the third line from the bottom. Can you state what that fleet agreement was?

A I don't know what they are referring to with the fleet agreement.

Q You never heard of a fleet agreement before?

A I have heard of a fleet agreement, yes, a General Motors fleet user agreement.

Q Can you describe what that was?

A Let's go back to -- you are going back an awfully long time. This goes back to the immediate post-World War II period.

Prior to World War II, General Motors did have in fact a fleet user agreement.

Q Did the agreement contain any terms about the use of the car that was purchased under the agreement?

MR. KLEINBARD: If he wants to examine him about a pre-World War II document, I think he ought to show him the document.

THE COURT: Why do we have to go into this?

MR. PERSON: It is, I think, very important. The fleet certificate in the mind of the dealers is nothing more than a fleet agreement which prevents the resale of any car purchased under the fleet agreement, and this is the reason that the dealers --

THE COURT: Why don't you get some dealer to come in and testify about that? I waited for you to bring in a dealer.

MR. PERSON: But a person from General Motors who can state what the fleet agreement is --

THE COURT: So? He said this goes back to World War II. Was such a thing called the fleet user agreement in effect or used by General Motors in 1967 or 1966 or 1968?

THE WITNESS: No, sir.

THE COURT: Is there an objection to this?

MR. KLEINBARD: I object to it.

THE COURT: Sustained.

MR. PERSON: Your Honor, I want to emphasize the importance of this since the witnesses themselves have referred to the fleet agreement in their testimony.

THE COURT: It would be important if you laid a foundation, but you haven't done it.

You haven't gotten any single dealer to come in here and say, "I thought such-and-such," as you are saying they thought, and I doubt if this witness can tell us what the dealers thought.

I doubt if I would let it in if he did.

MR. PERSON: This is on October 21, 1966, this is a document received by General Motors, produced to us, and states, "It has been my understanding that all of the fleet agreements contained a clause stating the car could not be resold within six months. Quinn told me this is not so now."

THE COURT: Who is this?

MR. PERSON: This is the New York Automobile Dealers Association, a copy of which went to General Motors, and their position on this, the New York dealers believed that the current transactions on October 21, 1966, prevented a fleet buyer from reselling the cars.

THE COURT: Are you offering this in evidence?

MR. PERSON: Yes, I am.

MR. KLEINBARD: I object to that, it doesn't say --

THE COURT: Let me see it.

MR. KLEINBARD: I don't think it says that. It reflects the understanding of a particular individual.

THE COURT: Who is Peter Gordon? Is he a General Motors dealer?

MR. KLEINBARD: I believe he is a dealer, your Honor.

THE COURT: What kind of cars?

MR. PERSON: He was with Cadillac, I believe, at one time.

MR. KLEINBARD: I am informed, your Honor, and I am not certain, but this was a full-time job at this point for Mr. Gordon. In other words, he worked for this association. If you give us a moment, we can check it out. I believe there is some testimony on it.

At the time of his deposition he was employed by the Greater New York, Long Island and Westchester Automobile Dealers Association and had been since 1956.

So he is not a dealer and not a General Motors employee.

MR. PERSON: It is a representative of the dealers, and a former employee of General Motors, and contending what their belief is as dealers. That there is a restriction upon the resale of automobiles in 1966.

The fleet agreement was years ago, but the fleet certificate is a carryover in fact, and that document evidences it.

I am asking the witness to state whether he knows that the fleet agreement restricted the resale of cars bought pursuant to the fleet user agreement.

MR .KLEINBARD: I don't want to interrupt your Honor while you are reading --

THE COURT: Let me just read this.

Are you seeking to introduce this into evidence?

MR. PERSON: Yes, your Honor.

THE COURT: How can it be binding on General Motors?

MR. PERSON: It shows that General Motors was aware that dealers believed there was some type of restraint upon sales made under the current fleet certificate under the mistaken impression that it was part of the old fleet agreement.

THE COURT: If you want to introduce this into evidence simply to show General Motors got this,and indeed the witness said he saw it, although he couldn't say when, I will receive it simply to show that General Motors got this.

But as far as indicating -- that is the beginning and end of it.

MR. KLEINBARD: Your Honor, the only comment I want to make is that it is obvious in this letter that it is replete with "I's" and purports to be just the views of Mr. Gordon, and at no point purports to be the views of anybody else.

THE COURT: Do we know who he is?

MR. KLEINBARD: An employee of this association.

MR. PERSON: Formerly an employee of Cadillac.

THE COURT: Mr. Person, you know, we start out with a theory. I don't want to get into an argument at this point, but we start out with a theory outlined at great length in your trial brief that General Motors was taking steps to stop its dealers selling to Nabcor.

Now we are down to some theory which I don't know what it amounts to as far as the antitrust laws, that General Motors knew that its dealers thought that a fleet certificate was what?

MR. PERSON: That the dealer could not sell on a wholesale basis to a company that did not possess a fleet certificate.

THE COURT: State that again.

MR. PERSON: That a franchise dealer of General Motors was not permitted to sell to Narcor or any other company on a wholesale basis for resale unless it had a fleet certificate, and we were never allowed to get a fleet certificate.

THE COURT: I don't think this document indicates that.

MR. PERSON: But it goes back to the fleet agreement.

THE COURT: What goes back to the fleet agreement? What you are saying to me doesn't make any sense nor does it correspond to what you said previously on what the evidence is.

MR.PERSON: The witness himself in a deposition has created the same confusion, and I would like to read the testimony.

THE COURT: The same confusion that you are stating?

MR. PERSON: Yes, your Honor.

THE COURT: Look, let's take this apart a little bit.

The evidence indicates in great repetition that General Motors' requirement for a fleet certificate was that the person receiving the fleet certificate was to use the cars and it would not grant the fleet cettificate for someone who simply resold cars to other people. We have that at great repetition.

2 Now, if some dealer believed that he was believing what General Motors' policy was as explained here by numerous witnesses and in many documents, that isn't what you are talking about.

MR. PERSON: I am saying that the dealer was willing to sell to us, but it believed he was not able to because Nabcor did not have a fleet certificate.

THE COURT: All right. That is another thing that I heard you say and you have tried to draw that out from witnesses who really don't know such a thing.

Now, according to the General Motors witnesses, it was not a General Motors policy and if the understanding occurred it would be a misunderstanding, according to the General Motors witnesses.

But I hear what you are saying --

MR. PERSON: We brought this to General Motors' attention.

THE COURT: I hear what you are saying and I am going to try to pause a moment and try to see if it has any relevance to the antritrust claims, and I guess what you are saying to me is your position is that you wanted that obstacle removed by the simple expedient of getting a fleet certificate.

MR. PERSON: Or advising the dealers they may sell to us and they refused to do either. They did not send a letter and did not give the fleet certificate and perpetuated the problem.

THE COURT: That is your side of it.

Now, the trouble with this Exhibit 74-A is -- let's say what it says. It says:

"It had been my understanding that all fleet agreements contained a clause stating a car could not be sold within six months. Quinn told me this is not say now."

Quinn, I guess, is Nabcor. Let me just see how that corresponds with your argument.

I don't think it corresponds with your argument.

MR. PERSON: It goes to the question we are saying that the fleet certificate, the fleet certificate is not required for us to be able to buy cars from the dealer and General Motors will stipulate to that fact. That is not a requirement, the dealers believed it was and we were --

THE COURT: But that isn't the belief that is voiced here.

MR. PERSON: For the reason that in 1966 there was no fleet agreement. The dealers thought there still was a fleet agreement and that was the certificate, and kept saying that when you bought you have to have the certificate, and we can't sell you without a certificate.

THE COURT: He is saying here that even if there was a fleet agreement, that the fleet agreement prevented something. It is not talking about not being able to sell in the absence of a fleet agreement or the absence of a fleet certificate.

MR. PERSON: Mr. Gordon stated that this letter is evidence that the Automobile Dealers Association in New York City believed that at that time, in 1966, when Nabcor was having difficulties, that Narcor was wrong in believing they could buy cars.

The fleet agreement required six months of holding. There was the ADA --

THE COURT: That is another point.

MR. PERSON: But Quinn said you are wrong, it doesn't require that. The people can sell to us, we don't have to have a fleet certificate.

When we told GM that the dealers created problems because we didn't have a fleet certificate, we wanted GM to alert the dealers.

THE COURT: There are just so many things mixed up, Mr. Person.

MR. PERSON: This is a very important part of the case, your Honor, and the fleet agreement is what caused the problem. This confusion, which General Motors never cleared up with the dealers, some dealers still thought, as Mr. Karney himself thought in his testimony, there had to be a fleet agreement.

THE COURT: Mr. Person, I want to tell you right now and I want you to listen, there are two different things, they are different.

One is you contend that the dealers thought that Nabcor had to have a fleet certificate in order for them to sell to Nabcor. That is your contention.

MR. PERSON: Told by General Motors.

THE COURT: But they thought that.

MR. PERSON: Right.

THE COURT: Now, I understand that and I understand your position. But I don't want it mixed up with another possible contention which I haven't heard until now, and that is what is contained in this memo and this is as follows:

"It has been my understanding that all fleet agreements contained a clause stating that cars could not be sold within six months."

That is a different contention and it is a contention that the dealers thought that something called a fleet agreement, and we will translate that into fleet certificate, if it was held by a buyer like Nabcor, it prevented that buyer from reselling within six months.

Now, that is a different contention and I want you to listen to me and at least take in what I am saying so we don't have just a lot of confusion.

It is a different contention than the contention there was a misunderstanding about whether you could sell to somebody without them having a fleet certificate or a fleet agreement.

Now, I haven't heard a word from Mr. Maiorana or anybody else that you put on to the effect that they were complaining to Mr. Belcher or Mr. Karney or anybody about the type of alleged misunderstanding contained in Exhibit 74-A.

I don't think there is a word in that, so now after you finish your case, to come along and try to introduce into the case a new claim of misunderstanding that was allegedly trying to be cleared up by people when they haven't testified they wanted to clear that misunderstanding up, to me it does nothing.

I am going to receive it --

MR. KLEINBARD: As something that General Motors received?

THE COURT: That's right, but the point is the question we are trying to wrestle with is, do you have to go back to World War II, talking about something which has never been talked about before in this case?

MR. PERSON: I refer to this several times.

THE COURT: You referred. Has the witness said it?

MR. PERSON: In my pretrial brief, and I am trying to show that the witness himself --

THE COURT: Where has a witness said, "I went to General Motors to clear up the misunderstanding that the dealers are confused in thinking all the fleet agreements contained a clause stating cars could not be sold in six months, please send a letter out to the dealers saying that people with fleet agreements are not barred from selling cars within six monehs? Where is anything testified that they made that request of General Motors?

MR. PERSON: My witness has done all but use the words "fleet agreement." He has talked --

THE COURT: Which witness.

MR. PERSON: Frank Maiorana testified that he went to GM and said he's having problems with the dealers who are requiring a fleet certificate. At that time GM admits that a fleet certificate was not required to purchase cars and they did nothing to cure the problem. They just -- in other words, Frank Maiorana --

THE COURT: I'll receive 74A simply for the fact that this is a document received by General Motors and seen at one time by this witness.

I'm not going to go into the history of the fleet agreement.

MR. PERSON: I never had a chance to present that to you before.

THE COURT: Why din't you get your witness to testify about it?

MR. PERSON: I have a witness who testified --

THE COURT: Show me the transcript.

MR. PERSON: I didn't say he mentioned

the words "fleet agreement."

THE COURT: Show me what you are referring to which makes this problem relevant and I'll reconsider it.

I'll not have him testify about World War II history of fleet agreements.

MR. PERSON: It's strictly the evidence that I said, that Frank Maiorana has testified --

THE COURT: Show me the references that make this point relevant.

MR. PERSON: I would like to read for the record what Mr. Karney testified to during that deposition and that is page 72 of the transcript. I asked about:

"Q Can you tell me what the purpose of the D&B report is for applicants for a fleet certificate?

"A Yes. A D&B is a Dun & Bradstreet report to indicate that they are a business concern and that they are a going business concern. We use that to verify an address, the location of the premises.

"Q What's the reason for the verification?

"A You want to be sure it's a business,

No. 1.

"Q For what reason?

"A Well, you must recognize that divisions can initiate a request for a certificate so we are, as a staff function, we are going to be certain that if we are going to execute an agreement with a company, a certificate, then we want to be certain it is a business concern and we want to be sure it is properly located because our man is going to make the certificate presentation. We want to know if it is a going business concern and if the premises on the request are correct."

THE COURT: Fine.

MR. KAPLAN: Mr. Person leaves out the paragraph where the witness says that he was mistaken in calling it a fleet agreement.

THE COURT: Read it.

MR. KAPLAN: It goes on from the point where Mr. Person left off:

"Q What obligations, if any, are entailed in accpeting a fleet certificate from General Motors?"

I withdraw that.

"Q Why do you refer to it as an agreement?

"A I can answer. If you go back in time it was called a fleet user agreement. In the early '40s and prior to that there were certain obligations or certain times under which GM agreed to do certain things and the fleet user agreed to do certain things. Following 1974 it was changed from a fleet user agreement to a fleet user certificate. Unfortunately, I misspoke and said 'agreement' rather than 'certificate.'

MR. PERSON: The same way Mr. Gordon made a mistake in his bulletin that was introduced.

THE COURT: Then Mr. Gordon was mistaken.

Where is the evidence that the alleged mistake of Mr. Gordon is something that Mr. Maiorana was trying to correct in his efforts with General Motors? There may be lots and lots of mistaken beliefs held by various dealers or trade association presidents, or whatever, but I don't think we are going to trace all of that.

MR. KLEINBARD: May I say this: Basically what it comes down to is an attempt to prove or to in effect psychoanalize some 12,000 dealers as to what their beliefs are what a fleet certificate meant or didn't mean or a plan meant and/or didn't mean. This is not the appropriate way to introduce that evidence, I submit.

Mr. Karney has no way of knowing what the dealers across the country thought. No single human being has that ability.

MR. PERSON: We have shown you by testimony that the dealers were not selling to us after they had agreed to sell to us because we did not have a fleet certificate.

THE COURT: That's not the problem addressed in this memorandum.

We have talked enough about this. I see the memorandum. I see what it says about what was understood. I have cognizance of that. I do not believe that there is anything that requires us to get into the technicalities of the fleet user agreements going back to World War II. If you can show me something in the testimony that connects it up, fine.

Let's go to something else.

BY MR. PERSON:

Q Did fleet allocations have anything to do with the fleet certificate?

A No.

Q Did any General Motors franchisees ever communicate with your fleet department, your fleet section, concerning fleet allocations?

A Would you define "franchise"?

Q A GM dealer. Did any dealers communicate with you concerning fleet allocations?

A With me directly? Not that I can recall.

Q Your office?

A Not that I can recall.

THE COURT: I think you were asked this, Mr. Karney, but maybe I just didn't focus on it:

In the various communications and talks you had with Frank Maiorana did he ever tell you that his company or his operation was being given difficulty because of a belief by General Motors dealers that someone who holds a fleet agreement or fleet certificate cannot sell cars within six months?

That's a long, complicated question. Do you understand it?

THE WITNESS: Let me see if I do.

Did Mr. Maiorana indicate to me that his difficulty --

THE COURT: That he was having a difficulty.

THE WITNESS? And that difficulty was due to the fact that --

THE COURT: That one of his difficulties was -- you go ahead.

THE WITNESS: That the dealers would not sell many cars because he did not hold them for six months?

THE COURT: That's one way of putting it. What's the answer?

THE WITNESS: No.

THE COURT: Let me put it in a slightly more expanded form.

Did he say that a difficulty of his was that dealers would not sell his operation cars because of a belief that someone who holds a fleet certificate or a fleet agreement could not resell a car within six months?

THE WITNESS: No, sir.

THE COURT: Did he ever tell you that one of his difficulties was that dealers believed they could not sell cars to Nabcor or its associates because the Nabcor people didn't have a fleet certificate? Do you understand me on that?

THE WITNESS: I think his statement was that it would help him obtain cars, not that they would not sell him cars.

THE COURT: I want to be very precise.

Did he ever complain to you about what he considered a belief on the part of General Motors dealers that, specifically, they could not sell to him because he didn't have a fleet certificate? Did he make that specific, raise that specific problem to you in that way?

THE WITNESS: Not that I can recall.

THE COURT: You are telling me he just indicated it would help him buy cars if he could get the fleet certificate?

THE WITNESS: That's correct.

THE COURT: Did he explain why he thought it would help him buy cars if he had a fleet certificate?

THE WITNESS: Not that I can recall.

THE COURT: You may proceed.

MR. KLEINBARD: The total conversation

between Mr. Maiorana and Mr. Karney, your Honor, is at pages 445 to 452 of the record, and no such statement was contained therein.

THE COURT: Mr. Maiorana's testimony about this meeting?

MR. KLEINBARD: Yes, your Honor.

THE COURT: Proceed, Mr. Person.

BY MR. PERSON:

Q You don't recall whether you asked him why he thought a fleet certificate would be of some assistance to Nabcor?

A I do not recall.

MR. PERSON: Your Honor, I would like to point out in the fleet plan of General Motors a company is qualified under a fleet plan -- I should say that the term "leasing" is defined as follows: "Shall mean the bona fide leasing of a passenger car involving use thereof by a customer for a specified period of six months or more and payment for such use by the customer on a lease term basis."

That's the same six-month reference that is still in General Motors fleet plans.

THE COURT: What are you reading from?

MR. PERSON: This is from the fleet plan, 1970 fleet plan, which was at Chevrolet, which is the same as the other --

THE COURT: Does that mean I can't buy a car if I'm not a part of that fleet plan?

MR. PERSON: That means that this six-month provision has been carried over in the fleet plan.

THE COURT: But the fleet plan meaning applying to whom?

MR. PERSON: To qualified fleet purchasers.

THE COURT: Qualified? Qho is a qualified fleet purchaser?

MR. PERSON: A person that takes and holds the car for six months.

THE COURT: Is this referring to the qualifications to get a fleet certificate?

MR. PERSON: We are saying that --

THE COURT: What you are reading from --

MR. PERSON: It does not say fleet certificate here, and GM has maintained that the fleet certificate does not have any meaning. They say that it does not mean anything. It is only to gather information and to make a person happy when he goes down to the dealership. On the other hand, they require a Dun & Bradstreet report; they confuse it with the requirements under the old fleet agreements. We told them the dealers would not sell to us because of this. There is a confusion which we brought to the attention of General Motors and they didn't do anything about it.

THE COURT: Let's not argue. We could spend a fair amount of time arguing about this. I don't want to do it now. I have made my ruling. We had a narrow question come up before. What you have showed me now does not change my view of it at all.

I'll just briefly say this: that the indications in the record so far are that General Motors did have something called a fleet certificate and that it did confer certain benefits on people who it considered were fleet buyers in the way of these allowances, in the way of perhaps special privileges on certificates --

MR. PERSON: That's wrong. They testified that the fleet certificate does not mean anything. It does not entitle --

THE COURT: That's not what I was saying. Listen to what I'm saying. General Motors has said that they confer fleet certificates on certain classifications of purchasers. They have also said that they confer some benefits on certain classifications of purchasers not necessarily dependent on who necessarily gets a fleet certificte, and those benefits consist among other things of allowances.

I am prepared to assume, and I think it is supported by the record, that there are some requirements by GM before they confer either a certificate or they confer benefits like allowances, and I am prepared -- it does not surprise me at all -- that if General Motors is going to give some benefits or give a piece of paper saying a certificate to people called fleet users, that they have certain requirements, and it in spades in this record that those requirements relate to using these cars in the person's fleet, and I would not be surprised at all if they state a time period.

There is a great distinction, however, in that whole category of classifications. Somebody like Nabcor coming in and buying cars to resell, if a dealer thought that Nabcor had to use cars in a leasing business and keep registrations in order to get a certificate or get fleet allowances, probably that dealer was right; but if the dealer thought that it could not even sell to Nabcor unless Nabcor had a fleet certificate or agreed to keep the car for six months, that was a mistake. That latter is our problem.

MR. PERSON: That's correct, your Honor.

THE COURT: If there is a problem.

That's where we are. I don't know whether the last little bit of discussion helps anything except that's the way it stands in my mind and I think we can proceed.

This witness has just testified that he was never told by Maiorana about any of these so-called misunderstandings, so you continue wih with your cross examination of this witness and I don't think we have to have this witness testify about a lot of World War history. I don't think it is all that difficult.

Proceed.

BY MR. PERSON:

Q Did any fleet users ever communicate with your office concerning the fleet allotment?

A My office in New York?

Q Yes.

A Yes.

Q Was your office the appropriate office for a fleet user to communicate about a fleet allotment?

A Recognize, if you will, that our office --

Q Please answer the question.

A Our office accepted communication from fleet users.

Q Were these fleet users fleet certificate holders?

A Yes, yes.

Q They did communicate with your office concerning a fleet allotment?

A Many things.

Q Including the fleet allotment?

A Yes.

Q Yet they were mistaken in directing the communication to your office concerning a fleet allotment; right?

A That was their avenue.

Q What did you do with the communications concerning the fleet allotment to fleet users?

A Forward it to the division that had the responsibility.

Q It was not your office that had the responsibility for the fleet allotment?

A I never claimed that.

Q So your office is correct that your office doesn't claim to have responsibility for the fleet allotment?

A That's correct.

Q But fleet certificate holders nevertheless communicated with your office concerning the fleet allotment?

A On occasion they may have.

Q You mentioned before you spoke with Mr. Maiorana concerning the Midwotn incident and that after you spoke with Mr. Maiorana you talked with Midtown Chevrolet concerning the Nabcor orders, is that correct?

A Yes.

Q You recall that?

A I recall speaking to Midtown, yes.

Q You recall speaking with Mr. Maiorana about Midtown?

A I recall Mr. Maiorana mentioning Midtown to me. I don't recall having conversation with Mr.Maiorana about Midtown.

Q Subsequent to the conversation with Mr. Maiorana you talked with Midtown and helped to correct the problem, in your opinion?

MR. KLEINBARD: I object to "helped to."

Q Isn't it a fact that the Midtown Chevrolet incident occurred on year before you spoke to Mr. Maiorana back in December, 1966, January 1967?

A I believe that's correct.

Q So your testimony was inaccurate then?

A I beg your pardon?

Q Your testimony or your memory was inaccurate as to what you did after your communication --

THE COURT: I am a little vacant on that. I don't think Mr. Kleinbard asked about what subsequent steps were taken with Midtown.

MR. PERSON: He volunteered this.

THE COURT: It's in this memo.

MR. PERSON: He volunteered it and my memory is his testimony was to that effect.

THE COURT: I'm just interested in what is in the record.

Does anybody want to bring out what he did with respect to Midtown? We started in in the course of conversation, and then I interrupted and said let's take it one step at a time. I don't think it was ever pursued again.

MR. KAPLAN: He did go one step further. He said he pursued the matter with Midtown.

THE COURT: You want me to do it? I'm confused as to the present state of the record.

BY THE COURT:

Q After your second meeting with Mr. Maiorana, when the Midtown matter was brought up, what, if anything, did you do with regard to Midtown?

You can use your memo of January 5th to refresh your memory, if you wish.

(Pause.)

A Following this visit with Mr. Maiorana I talked with Mr. Walter Englert, who was the fleet manager from Midtown Chevrolet. As I recall, your Honor, all I did was advise him that Mr. Maiorana had indicated Midtown refused to sell them vehicles, and they in turn provided the information that is contained in this document, that --

Q All you personally did was to talk to Englert, is that right?

A Yes.

Q You relayed what Mr. Maiorana had said his problem had been?

A That's correct.

Q You took no further steps?

A No, sir.

Q And the information contained in there, did that come from Englert or somebody else?

A That came from Mr. Englert.

Q Did Englert get back to you as to what he had done?

MR.KLEINBARD: It had already happened, your Honor.

Q Did Mr. Englert report to you what had happened?

A He advised me that this --

Q What did he report to you?

A That he had filled two orders out of the ten.

Q Just testify to it, please.

A That Midtown Chevrolet had in fact delivered two of the vehicles that Nabcor had ordered, that Nabcor had submitted a letter to them requesting cancellation of the eight remaining Nabcor orders that were covered by a purchase order.

Q Did he say when these events had occurred? I'm focusing on this. Did he indicate whether they had occurred subsequent to the time of your call to him or whether they had occurred at some earlier date?

A I don't recall specifically. I believe it referred to an earlier date, not subsequent to this January 5, 1968 date. It was prior to that.

THE COURT: Mr. Person, go ahead.

BY MR. PERSON:

Q Have you spoken with an attorney of General Motors concerning Nabcor prior to this litigation?

A Prior to this litigation? I don't know when the litigation started.

Q 1970, December.

A Yes. I had conversations.

Q When was that first one?

A I believe it was prior to my second meeting with Mr. Frank Maiorana.

Q Was it a Mr. Wasserman??

A No.

MR. KLEINBARD: I object, your Honor.

THE COURT: I don't think there is any privilege in getting the name.

MR. KLEINBARD: Wasserman is incorrect, in any event.

THE COURT: Let's have testimony.

The objection is overruled.

Q Do you recall who it was?

A Do I recall who I had conversations with?

Q Yes.

A Following the first meeting and prior to the second meeting?

Q Yes.

A A Mr. Pat Crowley, deceased, legal staff, Detroit.

Q Do you recall the general subject matter, that is, any particular instance that gave rise to your communication with Mr. --

MR. KLEINBARD: I object to that.

THE COURT: Sustained.

Q Do you recall the date, approximately?

MR. KLEINBARD: He said it was subsequent to the first meeting.

THE COURT: This is not going to produce anything. The questions here are what did the people do and talk about, not what they discussed with General Motors' counsel.

Q Do you know a Mr. Gray?

A I beg your pardon?

Q Do you know Walter Gray?

A I do.

Q Did you ever talk witn him concerning Nabcor?

A Yes, I did.

Q Approximately when?

A I don't recall.

MR. PERSON: I would like to offer Exhibit 82 --

THE COURT: Any objection.

MR. PERSON: That is a telephone message dated 12/21/66.

MR. KLEINBARD: I have an objection. I have no objection to your showing it to the witness or asking the witness about it.

THE COURT: Let me see thawt.

MR. KLEINBARD: They are not self-explanatory. That's the reason for my objection, your Honor.

THE COURT: I'll receive it.

Exhibit 82 is received.

(Plaintiffs' Exhibit 82 was received in evidence.)

xx1 THE COURT: Obviously you have to ask about it.

BY MR PERSON:

Q Look at this, please (handing).

(Pause.)

THE COURT: What is that?

THE WITNESS: This is a telephone message that my secretary would prepare of an incoming telephone call from a Mr. Walter Gray, advising that he had phoned.

THE COURT: Next question.

Q Does this note refer to Nabcor?

A I would believe it would.

Q Was Nabcor located in Room 508 of the GM Building?

A I don't recall at that time whether I knew they were located in 508. I may have.

Q Did you have a discussion with Mr. Gray concerning Nabcor on or around 12/21/66?

A I believe I did.

Q Was it after the receipt of this note?

A I don't know whether it was before or after.

Q Could you describe what your conversation was?

A As best as I recall, it was as a result of communication with Mr. Berg and that was when I was trying to determine where the office of Nabcor was and where Mr. Morrison would be located in order that I could speak to him, and I think that's the office that I contacted.

Q Did you refer to Nabcor with Mr. Gray as "our friend" at any time?

A No. I think "our friend" had reference to Mr. Bud Morrison, whom we both were friendly with since he was the fleet manager.

THE COURT: What was the reason you were trying to check out Morrison?

THE WITNESS: Because I recall that was a follow-up to the request by Mr. Berg, and there is a document that I looked at learlier referring to the specific date, I think it would go back into December of 1966 --

MR. PERSON: Exhibit 80?

THE WITNESS: This is subsequent. There is a document previous to this one.

Q From Mr. Chuck Church?

A Yes. That's a telephone communication.

MR. PERSON: I have Exhibit 85, a message from Mr. Chuck Church dated 12/14 and the witness has supplied the year.

Q 1966, is that correct?

A Yes.

THE COURT: What's the exhibit number?

MR. PERSON: 85.

A I would take this to be December 14, 1966.

THE COURT: What do you want to do with

85?

Q Who is Mr. Chuck Church?

A He was, in December, 1966, the assistant national fleet manager for OOldsmobile Division.

Q That was not part of the fleet section but was a divisional fleet part of General Motors?

A That's correct.

Q You had no responsibility over him, I gather?

A None.

Q Do you recall talking with Mr. Church concerning Nabcor?

A I do not.

Q Did you recall having read this memorandum at about the time it was prepared?

A Which memorandum?

Q Exhibit 85, 12/14/66, telephone memorandum.

A No.

Q You don't recall having read it?

A Not at that time, no.

Q Do you recall when you read it?

A No, I don't.

Q Did you read it at all?

A Yes.

Q Was it prepared by Miss Yost?

A No.

Q Is her handwriting at the bottom of the memorandum?

A No. That's Mr. Bob Berg's handwriting. He was the assistant director, fleet and government sales section, Detroit.

MR. PERSON: Is this in evidence?

THE COURT: No.

MR. PERSON: I would like to offer it in evidence.

THE COURT: Any objection to 85?

MR. KLEINBARD: For what purpose?

MR. PERSON: To show that General Motors has notice of the information contained in here, particularly, but not limited to, the statement that "our dealers are quite upset about this."

THE COURT: Is there any objection?

MR. KLEINBARD: No, your Honor.

THE COURT: It will be received.

MR. PERSON: Also that no investigation was performed.

(Plaintiffs' Exhibit 85 was received in evidence.)

THE COURT: Is this a memorandum from Mr. Karney's file or what?

MR. KLEINBARD: This is a memorandum that was given to Mr. Bob Berg and it was produced by us pursuant to a request that we produce all documents which contain reference to Nabcor. Actually, this is a memorandum to Mr. Berg and not to the witness.

THE COURT: It came out of Mr. Berg's file.

MR. KLEINBARD: It did not come from Mr. Karney.

THE COURT: This is not a document from Mr. Karney?

MR. KLEINBARD: No, your Honor.

THE COURT: To the best of your knowledge --

MR. KLEINBARD: We produced it because it contained a reference to Nabcor.

THE COURT: The writing at the bottom is Bob Berg's writing?

THE WITNESS: That's correct.

T7

Q Have you spoken with Mr. Englert many times about Nabcor?

MR. KLEINBARD: I object to the form of the question, your Honor.

Q Have you spoken to Mr. Englert about Nabcor?

A I testified that I have.

Q Can you approximate the number of times you have spoken with him about Nabcor?

A Two, three.

Q Did any of your discussions ever concern fleet certificates?

A Not that I recall.

Q Did Mr. Englert communicate with you during December, 1966, January, 1967, about the Nabcor orders at Mid-Town Chevrolet?

A I testified that he did, that I spoke to him.

Q About that time when the orders had not yet been delivered to any extent --

THE COURT: Mr. Person is now asking you whether you spoke to Mr. Englert back a year earlier, at the time of the transactions.

THE WITNESS: No, the only reference --

THE COURT: Just the answer "No."

Q Did you hear about the Mid-Town difficulties with Nabcor during December, 1966, January, 1967?

A No.

Q Had you spoken with Mid-Town Chevrolet or Don Allen Chevrolet concerning Nabcor during or prior to this period, December, 1966, to January, 1967?

A No.

Q Do you know whether Frank Maiorana had advised you that he had 1000 cars actually, that he actually purchased through Nabcor 1000 cars when he spoke with you when you were filling out the fleet certificate request?

THE COURT: I don't understand that question.

Q When you were meeting with Mr. Maiorana and filling out the request for the fleet certificate, did Mr. Maiorana state to you then Nabcor actually at that time had purchased about 1000 automobiles?

A He indicated to me there were a thousand cars in operation under Nabcor.

Q He said under Nabcor or did he say that Nabcor had title to them?

A I think he said they were registered in the name of individuals. I don't know who had title to them.

Q Wouldn't registration in the name of individuals be title in the individual?

A Not necessarily.

Q It would depend on what state?

A It would.

THE COURT: Let's not get into that.

Did he talk about title as such, using that word?

THE WITNESS: No, sir.

THE COURT: He talked about registration?

THE WITNESS: That is correct.

THE COURT: Go ahead.

Q Were there any suggestions that the activities of Nabcor and its brokers were to be done in the future as distinguished from having been accomplished at the moment Mr. Maiorana was talking with you?

A I don't recall.

MR. PERSON: I would like to point out on Exhibit --

THE COURT: What exhibit?

MR. PERSON: The fleet certificate that -- it is my Exhibit 355.

Q You said that the brokers will also sell new vehicles.

Do you recall whether any part of your discussion with Mr. Maiorana concerned his expectations of purchasing or leasing as distinguished from past accomplishment?

A I don't recall.

Q Did you ever communicate with any dealers to the effect that a fleet certificate was not required for a reseller of automobiles to buy cars from a GM dealer?

A I have no communications with dealers in that job.

Q Do you know anyone in GM whoever communicated with dealers to this effect?

A I do not.

Q Did you ever recommend to any person in GM that notice be sent to any dealers, GM dealers, to the effect that a fleet certificate was not required for a reseller to purchase automobiles from GM dealers?

A I do not recall.

Q Did you discuss with Mr. Olson any actions which the fleet section could take or should take with respect to the conversations that you had had with Mr. Maiorana or any of the charges that Mr. Maiorana made with Mr. Belcher?

A Yes, he instructed me what to do.

Q What did he instruct you?

A To proceed with a request for a certificate and obtain the information, which I did.

Q But that wasn't an investigation into any of the charges?

A No.

Q You weren't charged with making an investigation?

A I was not.

Q Did you request that any investigation be made?

A I did not.

Q Do you know of any investigation that was made?

A Not that I am aware of, no.

THE COURT: He explained that he asked Mr. Maiorana for the particulars, he testified about that, which were not, according to the testimony, forthcoming.

MR. PERSON: That is his testimony.

THE COURT: That is his testimony.

Q You had a meeting with Don Fogg, Frank Maiorana and yourself. Do you recall that meeting?

A Yes, I do.

Q Mr. Maiorana has testified there was one other person at the meeting. Do you recall any other person at the meeting?

A I do not.

Q Do you ever recall asking Mr. Maiorana why he believed a fleet certificate would help him?

A I do not.

Q Do you recall whether Mr. Maiorana advised you and Mr. Fogg that Nabcor disposed of the purchase cars on an outside basis as distinguished from lease?

A It was lease only.

Q You are saying he said to you lease only?

A His question was lease only, and that the distributor did in fact on occasion sell cars.

Q But you are saying Mr. Maiorana never told you that Nabcor sold any cars at all outright, is that correct?

A Would you restate that question?

Q Did Mr. Maiorana tell you that Nabcor sold any cars outright?

A Yes.

Q You talked with Mr. Maiorana about the Mid-Town incident?

A He talked with me.

Q Did you volunteer to Mr. Maiorana that you already knew about that incident?

A Not that I recall.

WALTER J. ENGLERT, called as a witness by defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KLEINBARD:

Q You are the fleet sales manager for Midtown Chevrolet?

A Yes.

Q You have held that position since some time in 1966?

A Yes.

Q Midtown Chevrolet is a GM-owned dealership?

A Yes.

Q And it replaced Don Allen Chevrolet, which was a privately-owned dealership, some time in December of 1966?

A Yes.

Q Prior to the changeover from Don Allen Chevrolet to Midtown Chevrolet were you employed by Don Allen Chevrolet-Pontiac?

A Yes.

Q Shortly after the time of the changeover did you become aware that certain orders for automobiles had been placed with Don Allen by Nabcor?

A Yes.

Q Approximately when did youi learn that?

A Late December, 1966 or early 1967, January of 1967.

Q Do you recall approximately how many cars were involved?

A Yes.

Q About how many?

A Ten.

Q Did you have any communication with any Nabcor personnel upon your discovering these orders?

A Yes.

Q When and with whom and, if you can tell me, how did you have such communication?

A I had communication with Mr. Morrison, Bud Morrison, shortly after the new year of 1967.

Q Can you tell me who Bud Morrison is or who he was at that time?

A Bud Morrison was with Nabcor at that time. Prior to that time, prior to the transition from Don Allen to Midtown Chevrolet, Bud Morrison was with the Don Allen Chevrolet-Pontiac organization, as I was, as the head of the fleet department.

Q Were you and he co-workers at Don Allen?

A Yes.

Q And after the changeover from Don Allen to Midtown he went with Nabcor and you remained on with Midtown, is that correct?

A Yes.

Q Getting back to this conversation with Mr. Morrison, did you say it was on the telephone?

A Yes.

Q Can you recall the substance of what was said in that telephone conversation?

A I told him we were receiving cars that had been ordered by Nabcor, that the price was going to be $75 over dealer invoice.

Q What, if anything, did he say with respect to that?

A He said they could not pay that price, that we could cancel the orders.

Q Did you have any response to his oral cancellation?

A Yes, sir. As I recall, I gave him

the purchase order numbers and asked him for a cancellation in writing.

Q Was there a standard price for sales of Chevrolets by the fleet department at Midtown?

A No, there was not a standard price.

Q Could you elaborate on that and explain how price was arrived at?

A Yes. Price would be arrived at by several factors: the quantity involved, the ease and manner of handling customer orders, the availability of the cars -- the time of the year would be a factor, and specialty cars, cars that were hard to get.

Q That's another aspect of availability in other words?

A Yes.

Q Did you subsequently receive any communication from Nabcor relating relating to these cars?

A Yes.

Q Can you tell us the nature of that communication and from whom it was received?

A I had received a message via my secretary that Frank Maiorana had telephoned, that they wanted the cars, and he expected GM to honor the price.

Q Did you know what was referred to when you got the message that he wanted you to honor the price?

A Not at that time, sir.

Q What did you do or cause to be done to determine whether there had been a prior agreement as between Nabcor and Don Allen with respect to price?

A Well, naturally with that statement it caused me to wonder if there was a price. I spoke to my secretary, Gussie Potaznick, who, incidentally, was also Morrison's secretary when we were the Don Allen organization, if there was any price established, any quotation, any letter of any kind to indicate the price.

Q What happened?

A She produced a letter from the file.

Q I show you Defendants' Exhibit R, the original of which I believe is already in evidence. I show you the Midtown copy of that exhibit.

Is this the letter your secretary showed you?

A I would say it is.

MR. KLEINBARD: I would like to offer that letter in evidence.

MR. PERSON: No objection.

THE COURT: This is not yet in evidence?

MR. KLEINBARD: No, your Honor.

(Defendants' Exhibit R was received in evidence.)

BY MR. KLEINBARD:

Q After you received Defendants' Exhibit R --

THE COURT: This speaks of $25 markup, right?

THE WITNESS: Yes, it does.

THE COURT: Proceed.

Q After you received the message from Mr. Maiorana, to which you referred a moment or two ago, did you have any further communications from any Nabcor personnel?

A Yes.

Q Can you recall from whom you heard?

A Mr. Bud Morrison.

Q What was the nature of that communication?

A The nature of the communication was that he threatened to sue us, in essence.

Q Did you see him in person or did he telephone or what?

A It was on the telephone.

Q Can you give us the substance of that conversation, the telephone conversation?

A Yes.

He threatened to sue us. They needed the cars. He said there was going to be an injunction letter going to court.

He made some reference to knowing that we were selling to other customers.

He made reference to the fact that he had no love for General Motors.

He used language of a vulgar nature.

Q Did you give any response?

A As I recall, not too much. But one thing I did, and another thing that was brought up in the conversation, was the mark-up price of $25. My response was --

THE COURT: Did he bring that up?

THE WITNESS: Your Honor, I am not sure

whether he brought it up or I brought it up, but I do know I said, "Why didn't you tell me what the deal was?"

In other words, I had spoken to him on the telephone the day before and at that time he said, "Cancel the orders," and he made no reference. But at this time I knew it was $25, and I said, "Why didn't you tell me?"

Q Did you jot down some notes as he was talking to you over the telephone?

A Yes, sir, I did.

Q I show you the last page of Defendants' Exhibit Q, which has been marked for identification, and I ask you whether these are the notes which you jotted down while you were talking to Mr. Morrison on that particular occasion (handing).

A Yes, sir.

MR. KLEINBARD: Your Honor, there is a whole series. I don't want to offer them piecemeal.

THE COURT: What did he say to you when you said, "Why didn't you tell me what the deal was"?

THE WITNESS: I don't recall that there was an answer.

Q What was the business effect of this conversation, as far as you were concerned?

A The business effect was that I lost interest; I didn't care to do business with Nabcor.

Q What effect, if any, did this conversation with Mr. Morrison have with respect to your note-keeping practices?

A I think that the --

MR. PERSON: I object. I don't see where we are heading on that.

THE COURT: I'll overrule it.

A Repeat the question again.

THE COURT: Did you take any steps after this? Did you do anythign different about taking notes of conversations?

THE WITNESS: Yes. I made notes of events that transpired.

Q As between what parties?

A Between us and Nabcor.

Q I show you the entire Exhibit Q for identification and I ask you whether these five pages of notes are the notes that you took of your various conversations with Nabcor personnel, together with a typewritten statement which we have prepared with Mr. Englert in order to make it more legible for the court (handing).

A These are my notes. It is my handwriting.

T3

Q Would you just hold that, because I am going to ask you a series of questions, and if you need to refresh your recollection by looking at your notes, please do so.

Did you write these notes more or less contemporaneously with your conversation?

A More or less, yes, as the events took place.

Q Are the very first notes the only ones that you didn't do contemporaneously?

A I would say perhaps that might be correct.

Q Now, what did you do, if anything, with respect to the message -- I may have gotten ahead of myself, just a second.

What did you do, if anything, with respect to the message which you had received from Mr. Maiorana on January 4, the message you received from your secretary?

A The next day I called Mr. Maiorana.

Q Can you give us the substance of that conversation, please?

A Yes. I called him, I told him that we had found a letter in the file Mr. Morrison had written and that we were honoring the price.

Q What did he say to you?

A He said that he was glad to hear this.

Q Did he say anything else?

A Yes. He wanted to know about future business, would we handle future orders.

I recall I said we were a new dealership and I was unable to say anything about new orders, that my crystal ball was hazy.

He said, "Then there is no basis for new business, for additional business?"

I said that was correct.

He went on to say that he knew that we were a factory store and that at first the factory branch did not wish to do business but did at a later time.

Q Did that more or less end the conversation?

A I think it did.

Q Did you have any further communication with Nabcor?

A Yes, I did.

Q Can you tell us what that was?

A The next day I called Frank Maiorana again.

Q What did you say to him on that occasion?

A It had been called to my attention there was a Corvette involved among the 10 cars ordered and that the price of $25 I was sure was not what Morrison had in mind.

Q What was Mr. Maiorana's initial response?

THE COURT: What did you say to Mr. Maiorana?

THE WITNESS: I told him we don't sell cars, Corvettes aren't sold at $25 over invoice.

Q What was his initial response?

A As I recall, he said that it was his understanding that it was $25 across the board but to let it wait until the following week, maybe they won't need the car.

Q Did you have any communications with any Nabcor personnel other than Mr. Morrison and Mr. Maiorana?

A Other than Mr. Morrison and Mr. Maiorana?

Q Yes.

A Yes.

Q Could you tell me with whom that was?

A The following week our secretary, Gussie Potaznick, got a telephone message from a Mr. Bill Vass of Nabcor.

Q Is that V-a-s-s?

A As I understand, it is V-a-s-s. They wanted three cars and to cancel the others.

I asked if she knew whether Mr. Maiorana knew this. She said she didn't know.

Q What did you do?

A I contacted Mr. Vass.

Q Can you give us the substance of that conversation?

A Yes. I asked whether Mr. Maiorana knew this, of this cancellation of the cars, and he said yes, he did.

I asked for a cancellation in writing, and also to have Mr. Maiorana call me.

Q From whom did you receive your next communication from Nabcor?

A The next one was from -- my secretary received it from another Nabcor individual by the name of Norm Weinberg.

Q Norm Weinberg?

A Yes.

Q What was the message?

A That the orders were not cancelled.

Q Did you ultimately have a conversation with Mr.Weinberg?

A Yes, I did. The next day when I returned to the office, because the previous day when I got the message from Gussie I was in Albany.

Q Again, can you give me the substance of the conversation between you and Mr. Weinberg?

A I called Mr. Weinberg, and at that time he spoke of the -- that he wanted a fourth car -- may I just -- I thought of something about what I previously said. Could I backtrack?

Q If you wish to modify or correct anything, please do.

A In the conversation with Vass we also talked about the Corvette.

Q Right.

A Because he had said we want three and cancel six. I said it is ten.

So he checked into it and said, "We want the order for the Corvette." That is it.

Q You are talking about your conversation with Mr. Vass?

A Yes, sir.

Q Does that finish it and can we go back to Mr. Weinberg?

A To my best recollection, yes.

Q Let's go back to your conversation with Mr. Weinberg. See if you can give me the substance of that.

A Mr. Weinberg introduced another order that he wanted.

Q What did he say?

A Well, what I said was, "Vass had cancelled two days earlier. I don't know whether this car is still available. I will check."

I also told him that one of the three cars that Vass had requested was ready, they could pick it up. The terms were cashor certified check. He said there would be no problem, and I again asked him to have Mr. Maiorana call me.

Q What happened with respect to the delivery or pick-up of any of these cars?

A Later that day the first of the ready cars that they wanted was ready and they came and picked it up.

Q When was your next communication with Nabcor following your conversation with Mr. Weinberg?

A The next communication was a telephone call with Ed O'Brien.

Q Could you tell us who Ed O'Brien is?

A Ed O'Brien was then with Nabcor. Prior to that he had been with Don Allen organization.

Q You and he knew each other?

A Yes, we knew each other.

Q What did Mr. O'Brien and you have to say?

A Mr. O'Brien confirmed,yes, they wanted that one car, that one additional car that Mr. Weinberg had referred to earlier, previously, and about the Corvette --

Q Before you get to the Corvette, what did you do with respect to this one car? Mr. O'Brien said he wanted one car. What did you say about it?

A May I refer to my notes?

Q Please, if you need to. That would be the conversation on the 16th.

A He said they did want the one car that Mr. Weinberg added.

We talked about the Corvette and we talked about the pricing of the Corvette,and I said, "The usual pricing on a Corvette is $250 or $225."

He said that he would clarify that order, maybe they didn't need it, but Mr. Maiorana was in Philadelphia and he would let me know about it the next day.

Q Are you referring to the Corvette ordered by that order?

A Yes, the Corvette order.

Q What happened to the other order, the Chevrolet that Mr. O'Brien said he wanted?

A That was delivered the next day.

Q Nabcor picked up the second Chevrolet, is that correct?

A Correct.

Q Mr. O'Brien said he would let you know about the Corvette?

THE COURT: He already said that.

2 Q Now, did you hear from Mr. O'Brien or anybody else again?

A Yes.

Q When was that, approximately?

A Two days later.

Q Who called?

A O'Brien.

Q What did he say?

A He apologized for the confusion. He said it was a matter of personalities. He said that they didn't need the remaining eight cars, they had been able to get them elsewhere.

He said he knew me, he always thought I was a gentleman, and I asked for a cancellation letter. He said he would do it. He also might stop in perhaps for lunch.

Q Did you in fact receive a cancellation letter from Mr. O'Brien?

A Yes, we did.

Q I show you Defendants' Exhibit P for identification and ask you whether this is the letter that you received from Mr. O'Brien?

A It is a copy of the letter, yes.

MR. KLEINBARD: I offer it in evidence.

MR. PERSON: No objection.

THE COURT: Received.

xx (Defendants' Exhibit P for identification received in evidence.)

MR. KLEINBARD: May I just read the last sentence, your Honor?

"Thank you for the cooperation that you and your department have given us in this and our previous business transactions. Sincerely," and signed by Mr. O'Brien.

Also, I would like to offer Mr. Englert's contemporaneous notes, which are Exhibit Q.

THE COURT: Any objection?

MR. PERSON: No objection.

THE COURT: Received.

xx (Defendants' Exhibit Q for identification received in evidence.)

Q Can you tell us who your supervisor was at Mid-Town in January of 1967?

A Yes.

Q Who was that?

A Fred Watkins.

Q Was he the interim branch manager?

A Yes, he was.

Q During any of these telephone conversations whether with Mr. Maiorana or anyone else from Nabcor, did you put Mr. Watkins or any other individual from Mid-Town on the phone to talk with the Nabcor person who was calling?

A I don't remember putting Mr. Watkins on the telephone, but my personnel would talk to him.

Q But did you simultaneously put anyone else on the telephone at all to talk to any Nabcor personnel?

A Not that I recall.

Q Did you or anyone from Mid-Town or General Motors in your presence ever tell anyone from Nabcor that you had orders not to sell to Nabcor?

A Would you please repeat that?

A Surely.

(Question read.)

A No, sir.

Q What was the reason that a person sought a fleet certificate?

MR. KLEINBARD: I object to that.

THE COURT: Overruled.

A What was the reason a person would want a fleet certificate?

Q Stated to you, yes.

A As stated to me?

Q Yes.

A I would answer that in this way: I think they would want a fleet certificate because they thought it might help them get the automobiles.

Q Did you ever do anything to tell them that that was incorrect?

A I can't recall -- I may have.

Q Do you recall any one instance where you did?

A No.

Q Was your fleet department supposed to sell automobiles to resellers of automobiles? Were you supposed to generate sales to resellers?

A We didn't look on it that way. I think I answered the question.

Q Answer this one: Did you ever attempt to generate sales to resellers of automobiles in your fleet department?

A Not that I can recollect.

Q Wasn't it a fact that you had a policy of not attempting to generate sales to resellers in your fleet department?

A I knew of no such policy.

MR. PERSON: I would like to read a stipulation that Mr. Kleinbard and I entered into during the deposition of Mr. Englert, and that's at page 60. It begins at page 60 of the deposition transcript.

MR. KAPLAN: If your Honor please, Mr. Person is about to read something which was withdrawn and altered a few minutes later. I would appreciate if he would read what we stipulated to and did not withdraw.

MR. PERSON: You stipulated what you stipulated to. After lunch you came back and said you are withdrawing. That's a unilateral withdrawing of the stipulation. I will read both parts, however.

Page 60:

"Mr. Kleinbard: I think in order to bring this to a head, Mr. Person, we are prepared to stipulate, with the exception of the processing of these ten cars which had been ordered prior to the time that General Motors took over Midtown Chevrolet, that it was the corporation's policy not to sell to brokers of the Nabcor type and therefore, with the exception of fulfilling these ten orders, the corporation was not soliciting the business of Nabcor or it was not interested in the soliciting of the business of Nabcor."

THE COURT: The "corporation" meaning what?

MR. PERSON: GM, since this was a division of General Motors, Midtown Chevrolet.

"Mr. Person: Did this policy extend into sales at prices higher than fleet prices?

"Mr. Kleinbard: The policy was not to deal with procedures such as Nabcor who were engaged in the business of reselling cars.

"Mr. Person: Did that extend --

"Mr. Kleinbard: Independent of price."

I will let Mr. Kaplan read what he wants to.

MR. KAPLAN: At page 64 I made the following statement:

"All right. Just so that the record is clear, I think the statement that we made in terms of the stipulation before lunch about GM policy regarding sales to people like Nabcor may have been somewhat ambiguous or erroneous and therefore I would like to restate for the record what we do and do not concede.

"We are willing to have deemed established for the purposes of this case only that, had General Motors officials above the level of personnel employed in branch stores been presented with the question of whether GM-owned-and-operated dealerships should sell to persons such as Nabcor who were reselling automobiles, the decision would have been not to sell to such persons. We do not concede that that question was ever presented to any such officials, that any formal policy of that nature was ever approved or passed on in any way, or that any such policy or practice was communicated to the personnel employed in GM-owned-and-operated dealerships."

And Mr. Person then said:

"Are you stating you are not stipulating to any application of that policy?"

And I responded:

"We are not even stipulating there was such a policy. We are stipulating to a hypothetical. Had the question been presented, that would have been the decision, and we by no means stipulate to any application of that policy in the case of Midtown or anywhere else."

THE COURT: What you are stipulating to is that at the level of the company store, this particular company store, the policy was not to solicit Nabcor's business.

MR. KAPLAN: That's precisely what we are not stipulating. We were saying to Mr. Person, had the issue ever been raised as to what our policy should have been, we would not have sold to them; but we are specifically stating that the issue never was raised.

THE COURT: Never was raised at any level?

MR. KAPLAN: At any level. At least we make no stipulation with respect to the issue being raised at any level.

THE COURT: Proceed.

BY MR. PERSON:

Q Was it your opinion, Mr. Englert, that you were free to sell to Nabcor in the future after these ten cars?

A It was my opinion?

Q Yes.

A I could have.

Q Did you make any efforts prior to this instance to develop sales with Nabcor?

A Prior to this incident?

Q Yes.

A No.

Q You did know of the existence of Nabcor before the incident occurred, did you not?

A Yes.

Q And you knew that Mr. Morrison had gone over to Nabcor, isn't that correct?

A Yes.

Q And Mr. Morrison was your immediate superior at Don Allen?

A Yes.

Q You made no effort to develop any sales with Nabcor, did you?

THE COURT: Is that an antitrust violation?

MR. PERSON: I am trying to show they had no intention of trying to sell to Nabcor in spite of the fact that he claims maybe he could have.

THE COURT: Look, Mr. Person, this has happened on I don't know how many points. Your witnesses present a certain position. They give the court a certain impression. I would say in every case -- maybe not every case; maybe every case but one or two -- that initial position is shot down by the rebuttal witnesses, shot down by documents, and then you fall back to another position.

The pitch that was made on your case was that there was a refusal to honor these ten or so orders because of a desire to harm Nabcor. We have documents virtually conclusively rebutting that, and then you come back with the idea that they had a policy of not being willing to sell in the future.

I must say after somebody orders and then cancels, it would not surprise me if they did not just rush out seeking Nabcor's business; but in any event it is not the position that was brought forward by your witnesses on their sworn testimony originally.

MR. PERSON: They did testify that the orders were there and there was a refusal to deliver the cars. This occurred subsequent --

THE COURT: Maybe I'm really being deluded but I did think that it was your position that the refusal to sell the bulk of these ten cars was the result of some kind of decision, a conspiratorial decision, to harm Nabcor as part of this overall conspiracy.

Didn't you intend to convey that?

MR. PERSON: We have conveyed --

THE COURT: Did you or did you not intend to convey that position to me?

MR. PERSON: Your Honor, could you restate that and I'll answer it.

THE COURT: I was under the impression during your direct case that your position was that Midtown Chevrolet refused at first entirely to deliver the ten cars and that this was part of the conspiratorial activity of General Motors after it took over Midtown, and that the subsequent redelivery of the three cars or so was only the result of pressure by Maiorana; but the temporary or permanent refusal with respect to these ten cars was part of General Motors' conspiratorial activity.

If that was not your position why don't you just clear it up now.

MR. KLEINBARD: That appears at page 374 of the transcript, what you just said.

THE COURT: I say to you, Mr. Person, right here and now, that is shot, completely shot, as so many of these contingents are that we have spent so long developing.

So now I understand that you have an alternative theory that after the ten cars there was some policy not to deal in the future.

MR. PERSON: The policy was one that was ab initio. I'm trying to show that the witness never sold to any resellers and that he had dealings with United Auto Brokers.

THE COURT: I will not get into that. I don't know what problems they had or created with Midtown. I have not the faintest idea.

MR. PERSON: I'm trying to show that General Motors did not intend to deal with us and this was a clean-up operation, getting rid of the cars, and the cars were reordered elsewhere, by testimony, so that this is the incident --

THE COURT: They didn't even take but two of the so-called clean-up operation.

MR. PERSON: They stopped the delivery of the cars and then the rest of the evidence you are hearing is a clean-up situation with respect to those cars. The testimony is that they stopped the delivery.

THE COURT: Let's get on with the hearing. This is a preliminary hearing.

I am fast coming to the point where I know what the situation is, and I think we ought to get finished with this hearing today and impanel the jury tomorrow and go forward with the trial.

I'm telling you, Mr. Person, so far you have not sustained your burden of proof. In fact, if there was a burden of proof on GM I think they have thus far sustained it, so far beyond a reasonable doubt.

I have been patient --

MR. PERSON: Impanel the jury right now then.

THE COURT: Unless things improve drastically the ruling is in favor of General Motors, as far as any hearsay testimony of co-conspirators.

MR. PERSON: I have put on my case. Why don't we pick a jury right now? I think it is very clear that the fleet certificate is a sham and that it interfered with us and --

THE COURT: You can make all the argument you want.

MR. PERSON: The jury will believe it.

THE COURT: If you want to withdraw your application to have the -- I don't think that's a fair question.

MR. PERSON: I think we are entitled to it and I think there is summary judgment material here that they interfered, and they have not proven that the fleet certificate has any meaning.

THE COURT: Absolutely not.

I am serious about concluding this preliminary hearing. I think the handwriting --

MR.PERSON: Pick a jury right now. I will get my witnesses in.. I think you are very wrong.

THE COURT: I don't want to preclude General Motors from putting in the record what it feels it should put in.

MR. PERSON: I think they have a burden of proof.

THE COURT: What I am trying to do, as long as we got into this discussion, I don't want to frustrate the proper completion of this hearing, and I think General Motors is entitled to put on evidence, make whatever record it wishes. This is not the end of the story. There will be undoubtedly appellate proceedings, but at the same time, as far as the District Court is concerned I have followed this carefully and I did not intend to reserve decision for weeks and weeks; I intended to rule on the completion of the hearing.

As of right now the proof is overwhelming that General Motors was not engaged in a conspiracy to harm Nabcor, and the proof is overwhelming that these allegations by the plaintiffs, based on certain testimony, have been rebutted so virtually dramatically by documents, credible evidence, by evidence so far exceeded in credibility than that of the credibility of the plaintiffs' witnesses, it is dramatic.

MR. PERSON: We hav 80 incidents of refusal to deal that I would like to go into.

THE COURT: I'm talking about the credibility and believability of the witnesses you put on and I think that their testimony -- I hate to use a hackneyed phrase, but it is simply a tissue of lies.

MR. PERSON: As long as you don't think we should go further in the proceeding, let's go to a jury.

THE COURT: I want to finish this day. I will permit you to make whatever record you feel you need to.

MR. KLEINBARD: We will try to be as brief as possible. We have four very short witnesses.

MR. PERSON: I'm not done with the witness.

THE COURT: You can continue. Continue your cross examination.

BY MR. PERSON:

Q You mentioned a usual price for Corvettes. What was that, please?

A In the neighborhood of $250, $225.

Q That's a $25 spread, is it not?

A Yes.

Q There is a usual price for Chevrolets?

A No.

Q There is not, but there is one for Corvettes?

A When you say a usual price, I make the distinction because a Corvette is a specialty car. They are very difficult to get.

Q Isn't that one of the factors you said would vary the price?

A Yes.

Q As long as a Chevy is not a special car why is there not a uniform price? Why isn't there a range of $25 or less in fleet price?

MR. KLEINBARD: I object. I don't see what difference it makes.

THE COURT: Overruled.

A I think I stated on the pricing that there was not a standard pricing; it varied. It varied because of the time of the year, availability, the ease of handling a customer. These are factors that one takes into consideration.

Q Did the usual price range more than $25 from top to bottom?

A Yes.

Q How do you explain that in light of the range for the Corvette?

A There were not that many Corvettes to begin with, and if we handled three or four a year, that was a lot.

Q What was your lowest fleet price to anybody during 1967, the first part of the year?

A The lowest fleet price?

Well, the lowest price --

Q Fleet price.

A The lowest price that we sold in the fleet department would be $25.

Q That was the price that Don Allen had given to Nabcor, is that not correct?

A Yes.

Q What's the highest fleet price, excluding any Nabcor transactions during the first part of 1967?

A I would say the highest price to a fleet buyer in that particular area would have been about $75 over dealer invoice.

Q Do you recall anyone that you sold it to for that amount?

A Yes.

Q Who?

A I sold a small daily rental company here in New Tork at 75 over invoice.

Q How many cars?

A I would say between ten and twenty.

Q When was the price negotiated?

A When I made the deal earlier.

Q When?

A February, March.

Q Did they have a fleet certificate?

A I don't know.

Q Would that have made a difference in the price?

A No.

Q Did the automobiles ordered for Nabcor come out of any fleet allotment?

A Mr. Person, that was ten years ago. I don't know. I don't remember whether there was any allocation, but I can tell you this: the cars were ordered by Don Allen obviously in November, because November was the date of the quotation. I don't know the date of the orders. They were there already at the time of the new year, which in my opinion was a reasonable time for cars to be ordered, to be scheduled, to be built, and there we were.

Q The cars were there when you took over as Midtown, is that not correct?

A I would not state that as correct, that they were there when I took over.

Q Do you recall how long after the take-over before you saw the cars or you saw evidence of the cars?

A I think I stated earlier they came in around about the end of the year of '66 or very early in '67.

Q So they came in on time, approximately?

A I would say yes.

Q Did you ever receive the deal with any other Nabcor broker or any Nabcor franchisee?

A Yes.

Q When was that?

A In March, 1969.

Q Had you had any prior dealings with this person?

THE COURT: Who was that?

Q Who was the person?

A The name of the man was Turco.

Q Had you had any prior dealings with Mr. Turco and yet you refused to deal with him? Is that correct?

THE COURT: Let him tell his story.

A There was a telephone message received in my office that a Mr. Turco called, Nabcor. I returned the call to Mr. Turco. He said he had a Nabcor franchise. Hwas buying cars from dealers in the city. He thought it would be easier to do business with us.

I replied, "We do not choose to do business with you."

Q Why was that?

A Because of my previous experience with Nabcor.

Q But if it were not for Nabcor you would do business with him?

A I don't know if I would have said yes right then and there. I think I probably would have visited him.

Q Like you visited United Auto Brokers?

MR. KLEINBARD: There is no foundation he visited them.

Q Did you visit them?

A I have no recollection visting them.

Q Do you know a Mr. Arnold Wanseiver?

A Not that I can recall.

Q You don't recall him on behalf of United Auto Brokers trying to buy cars through Midtown?

A No, I don't.

Q Does Midtown Chevrolet deal with any bird dogs?

A No, we don't.

Q Had that been a policy of Midtown Chevrolet since you were there?

A Yes.

Q Do you deal with any auto broker referral systems of any kind?

A Not that I can recall.

Q Isn't it true that it's a policy of Midtown Chevrolet not to deal through auto referral systems, bird dogs or resellers of automobiles since the time you started in Midtown?

A Mr. Person, you put a lot of different categories together there. You mentioned bird dogs and so on.

Q Isn't it true that it's been a policy of Midtown since you were there not to deal with bird dogs?

A Bird dogs, yes.

Q Resellers of automobiles?

THE COURT: Can anybody describe what a bird dog is?

Q Could you describe a bird dog?

A Yes. In my opinion, a bird dog is one who uncovers a prospect for a car.

For example, your Honor, a garage mechanic or a service station, service gas station mechanic, he knows the customer has a bad car. He refers him to a dealership, and then the dealership would pay him a fee, which would be considered a bid-dog fee.

THE COURT: What would your policy be? I take it you would sell a car to a customer who came but you say you would not pay anybody a fee?

THE WITNESS: That's correct.

Q Are you familiar with companies such as United Auto Brokers or United Buying Service?

A Yes. I have heard of them.

Q They refer customers to franchised dealers, is that not correct?

A As I stated, I never visited them. I don't do too much of -- I don't know too much of their business. I can relate to you experiences of family members.

I have a brother-in-law who is a teacher in the City of New York, and they have an arrangement where the Teachers' Union can buy a car from a dealer on that basis and they go through some sort of brokerage.

Q How many sales has Midtown made since you were there to any kind of buying service?

A None, to my knowledge.

Q And to no resellers other than Nabcor for a few transactions, correct?

THE COURT: I don't know what this means. As far as paying fees to bird dogs, there is no possible connection with our case. As far as paying fees to other people who want fees from Midtown, it has no relation to our case.

As far as other resellers, I don't know. They may or may not have good credit. They may or may not --

MR. PERSON: They are not looking for that business, your Honor.

THE COURT: I would expect an objection to that question and I would sustain it.

MR. KLEINBARD: I object, your Honor.

THE COURT: Sustained.

T5

Q Did you want to sell cars to Nabcor?

MR. KLEINBARD: I object to that, he already testified.

THE COURT: Sustained.

Q When you prepared your notes had you already been advised that Nabcor was thinking of suing Mid-Town?

MR. KLEINBARD: Which notes?

Q The notes that are in chronological order as part of Exhibit Q.

MR. KLEINBARD: They actually go in reverse chronological order.

Q Pages 6, 7, 8 and 9 of Exhibit Q.

A What is the question, sir?

Q Had you been informed by the time you made those notes on pages 6, 7, 8 and 9 that Nabcor was contemplating suit against Mid-Town?

A By the time I wrote these notes?

Q Yes.

A When I had wrote these notes some of them were after the time that Mr. Morrison talked to me and threatened me.

Q Some are after?

A Yes, the dates would indicate that.

Q What did you do when Mr. Morrison threatened suit, did you communicate with any attorney for GM?

A Not to my recollection.

Q Did you speak with Mr. Karney of the fleet section?

A Would you repeat the section?

Q Did you communicate with Mr. Karney of the fleet department? Do you know Mr. Karney?

A Yes, I know Mr. Karney.

Q Had you talked with Mr. Karney about Nabcor at any time at all?

A Only once that I can think of.

Q When was that?

A After we received the letter of cancellation.

Q What was your communication about?

A In essence that we had gotten a cancellation.

Q Who did you communicate with to decide whether to deliver cars to Nabcor or not?

A Who did I communicate with to decide to deliver cars to Nabcor or not?

MR. KLEINBARD: Speaking of this particular order, Mr. Person?

MR. PERSON: Any of the orders.

EXAMINATION

BY THE COURT:

Q Did you talk to anybody about the situation?

A Yes, I would have talked to Mr. Watkins, our branch manager.

Q Did you talk to anybody else?

A About these orders?

Q About these orders or Nabcor. I want the whole story, everything you did, everybody you talked to; what happened.

A Well, when the orders came in I discussed -- when the cars came in, excuse me.

Q When did the cars come in?

A Some time later in December or early January.

Q At the very beginning of your examination by Mr. Kleinbard you said that you became aware that Nabcor had ordered cars.

How did you become aware?

A I believe when they started to come in and the shipping tickets matched up with the purchase orders.

Q What happened then? Did you then have people call Nabcor to say the cars were here and would be delivered or what happened?

A Well, the first step, your Honor, I discussed it with Mr. Watkins.

Q Why did you discuss it with Mr. Watkins?

A Because there was no purchase price on the purchase orders and I did not --

Q Give me your entire discussion with Mr. Watkins.

A I went to Mr. Watkins, told him I had orders for Nabcor cars, the cars were in, I don't know the price, what should I do.

Mr. Watkins, I don't know if immediately or shortly after, he took me upstairs to the legal department of General Motors and after that it was decided we deliver the cars.

Q Why did he take you to the legal department of General Motors?

A That, sir, I don't know.

Q Were you taken to the legal department of General Motors everytime cars came in?

A No.

Q Wasn't that unusual?

A Yes.

Q Don't you know why you went to the legal department?

A Well, there had been, I knew there was litigation in earlier years in California in which the corporation was involved in some sort of action like this.

I didn't know what the details were, so we knew they were in the automobile broker business. Mr. Morrison, who was my colleague, had gone into this business and I was seeking direction.

Q Why were you seeking direction?

A I didn't know what --

Q Did you tell Mr. Watkins you wanted directtion?

A I would think I asked him.

Q That is what I want to know. I want you to tell me.

A Yes, I asked him what should I do with the orders.

Q I just asked you that. It is not a question of your not knowing the price, was it?

A No.

Q You had told me a few minutes ago and gave me to believe it was just a question of not knowing the price. What was the problem?

A They were brokers --

Q You tell me now everything you talked about to Watkins.

A It is ten years ago.

Q I don't care, you were remembering quite a bit, so you remember the whole story.

A I went to Mr. Watkins, asked dirction.

Q About what?

A What to do with the orders.

Q Did you tell him why you were seeking direction?

A I don't think it was necessary. We all knew they were automobile brokers.

Q Why wasn't it necessary? What was that problem that they knew they were automobile brokers?

A As I say, I knew they were reselling and I knew there was a litigation in California years earlier and -- how shall I say it, Judge?

Q It isn't how you should say it. You say it as it was. Was it a fact you didn't want to sell to auto brokers like Nabcor? You wanted to see whether you were legally obliged to?

A No, I think it is coming back to me now. I was new at the corporation. I did not know what to do, your Honor.

Q What was the problem, that is what I am trying to get at.

A They had this case years ago and I wanted to know what should I do with the cars, should I deliver them. The ultimate answer was yes.

Q I hope I am making myself plain. I want to know it step by step and I am getting the impression that this was not the most sought after customer.

There was a question of whether you even wanted to deal with him. Is that impression correct?

A That I did not want to deal with him?

Q You thought the company didn't want to deal with him?

A If you phrase it that way, I was looking for direction and I was knew at General Motors, I was only there three weeks.

Q In other words; you had an order from Nabcor, an auto broker, and you knew Nabcor was an auto broker?

A Yes.

Q You were not sure whether that order should be honored or not?

A The policy was that we would deliver the cars, and I guess it was.

It wasn't clear in my mind, because they were brokers.

Q The policy was what?

A To deliver the cars that Don Allen had taken as orders and which we took over.

Q That was the general policy, right?

A Yes.

Q But here was an order from a broker, right?

A Yes.

Q So you wondered whether that general policy would be followed, is that right?

A I would say that was right, yes.

Q That is why you went to Mr. Watkins?

A Yes; also the matter of price.

Q Tell me what -- there wasn't any price listed?

A As I recall, there was no price on the purchase orders, yes.

Q Now that we are getting into this, you tell me everything you told Watkins and what Watkins told you.

A I think I already related that.

Q I don't think you have, and if you have, go over it again.

A I went to Mr. Watkins with the cars or the orders, told him that the cars had come in. There was no price on them, what do I do?

Subsequently Mr. Watkins took me to the legal department. I don't remember the name of the attorney. I don't remember too much of the discussion except --

MR. KLEINBARD: I don't want the witness --

THE COURT: You don't have to go into that, that is the attorney-client privilege and your counsel is objecting.

But did there come a time when you finished your talk with the lawyer? I take it you finished at some point?

THE WITNESS: Yes.

2 BY THE COURT:

Q Did you then talk to Mr. Watkins further about this?

A Yes. Mr. Watkins said deliver the cars.

Q Was there a talk then or at any subsequent time with Watkins or anybody else as to whether you would accept further business from Nabcor?

A No, your Honor, I don't remember that.

Q Are you sure?

A Yes, sir.

Q Did Nabcor attempt to place any orders with Mid-Town after the cancellation of the eight cars reflected in this letter of January 18, 1967?

tions.

THE COURT: Anything else?

MR. KLEINBARD: I have no further questions.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Next witness.

MR. SILVERMAN: My next witness is Peter Econ.

PETER GEORGE ECON, called as a witness by defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Econ, you have been employed by General Motors 20 years, correct?

A Yes, sir.

Q In 1970 you were staff assistant in the Owner Relations Department of General Motors, correct?

A Yes, sir.

Q Your office was in Detroit, Michigan at that time?

A Yes, sir.

Q Could you please tell us what your responsibilities were as staff assistant in the Owner Relations Department in 1970?

A At that time it was part of my responsibility to -- any inquiry or owner complaint directed to the corporate offices were handled by our staff.

Q What did you do with respect to the inquiries and complaints that came to you?

A I would direct it to the appropriate division involved , whether it be a car product or Frigidaire, whoever is involved.

Q Did you communicate with individuals who had written or telephoned General Motors?

A Yes,sir.

Q Did you communicate on the telephone with such customers?

A Yes.

Q How frequently during the period of 1970?

A On the average of ten or fifteen phone calls per day.

Q Did you also write letters to inquirers?

A Yes.

Q About how many letters did you write in a month in 1970?

A I would say 500 to 600 letters.

Q Were these mostly form letters, routine letters?

A They were routine letters.

Q If a problem involving delivery of a Chevrolet were reported to you what would you do in 1970?

A I would direct it to the Chevrolet Division.

Q Do you know Leo Marcin?

A Yes, sir.

Q What was Mr. Marcin's position in 1970?

A Mr. Marsin was on the customer service staff at Chevrolet Division.

Q Were you in contact with him in 1970?

A Yes, sir.

Q Concerning what?

A Any inquiry that I may receive by phone, and I would take notes as I was talking with the customer, and then I would relay these notes to Mr. Morrison or his colleague at the time.

Q How frequently did you communicate with Mr. Marcin in 1970?

A I would say on the average two to three times per day.

Q To your knowledge, has anyone named Leo Marcus ever worked in any of the customer relations departments of General Motors?

A No.

Q Do you know if anybody named Leo Marcus works or ever worked for any department or division of General Motors?

A No, sir.

Q Prior to the time you were contacted by GM's counsel in connection with this lawsuit, had you ever heard the name of Nabcor or National Auto Brokers C[illegible]p.?

A Yes, sir.

Q When had you previously heard of Nabcor?

A Earlier this year I had seen an article that appeared in the Automotive News.

Q Did that article pertain to this litigation?

A No, not that I know of.

Q Other than that article and communications with counsel, had you ever heard of Nabcor or National Auto Brokers Corp.?

A No, sir.

Q Prior to the time you were contacted by GM's counsel had you ever heard the name Frank Maiorana?

A No, sir.

Q Had you ever heard the name Mark Stolarski?

A No, sir.

Q Had you ever heard the name Badie Bodya?

A No, sir.

Q Have you ever heard of Mr. Wamsler?

A No, sir.

Q Have you ever spoken with Mr. Maiorana, Mr. Stolarski, Mr. Bodya or Mr. Wamsler?

A Not to my knowledge, I have not.

Q Is it possible you did?

A It is possible.

Q You spoke to many customers?

A True.

Q Did you ever question a customer on why he had purchased a car from a particular retail source?

A No, sir.

Q Did you ever say in words cr substance to any customer who purchased a GM car from a source other than a GM franchised dealer that you were not happy about the fact that he did not buy the car from a GM franchised dealer?

A No, sir.

Q Did you ever tell anyone that Nabcor or an auto brokerage company or any company should not be selling cars?

A No, sir.

Q What was your practice with respect to communicating with GM dealers about the delivery of particular orders?

A I don't have any responsibility directly with dealers.

Q Did you communicate with dealers in 1970 in connection with your job?

A No, sir.

Q Are you familiar with the term "drop shipment"?

A I heard it yesterday. I assume that it means a courtesy delivery by dealer B for dealer A.

Q Did you have anything to do with drop shipment in connection with your job in 1970?

A Never.

Q Did you ever tell anyone that requests for drop shipments required the approval of General Motors?

A No, sir.

Q Did you ever tell anyone that General Motors would not ship a car or allow its dealers to arrange for drop shipment?

A No, sir.

MR. SILVERMAN: No further questions of this witness at this time.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. PERSON:

Q Have you ever spoken with any persons who said they had palced an order for a new GM car with a dealer not franchised gy General Motors?

A I have on occasion.

Q How often?

A Maybe twice a year.

Q Were any complaints for delayed or nondelivery --

LEO R. MARCIN, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SILVERMAN:

Q Mr. Marcin, you have been employed by General Motors since 1959, correct?

A Yes, sir.

Q In 1970 you were coordinator in customer services for Chevrolet?

A Yes, I was.

Q Your office during that time was in Detroit?

A That's right.

Q What were your responsibilities as coordinator of customer services for Chevrolet in 1970?

A Handling customer communications.

Q Did you have occasion to speak with customers directly?

A Yes, I did.

Q On the telephone?

A On the telephone and letter.

Q About how many telephone calls with customers did you have in the average day in 1970?

A About 30.

Q Would you write letters to customers?

A Yes.

Q About how many in 1970?

A Maybe ten a day.

Q Do you know Peter Econ?

A Yes.

Q What was his position in 1970?

A He was working in the General Motors customer services office.

Q Were you in contact with Mr. Econ in the course of your duties as coordinator of customer services in 1970?

A Yes, I was.

Q About how frequently?

A Maybe four or five times a day.

Q To the best of your knowledge has anyone named Leo Marcus ever worked for Chevrolet customer services office?

A No.

Q Do you know of any Leo Marcus working for General Motors?

A No, I don't.

Q Prior to the time you were contacted by General Motors counsel in connection with this litigation, have you ever heard of Nabcor or National Auto Brokers Corporation?

A No, never.

Q Frank Maiorana?

A No, I don't recall it.

Q Marcus Stolarski?

A No, I don't.

Q Badie Bodiya?

A No.

Q Mr. Wamsler?

A No, I am not familiar.

Q Have you ever spoken with Mr. Maiorana or Mr. Stolarski or Mr. Bodiya or Mr. Wamsler?

A I don't recall.

Q Is it possible that you did?

A It is possible.

Q Did you ever question a consumer why he purchased a car from a particular retail source?

A No.

Q Did you ever say in words or substance to any customer who purchased a GM car from a source other than a GM franchised dealer that you were not happy about the fact that he did not buy the car from a GM franchised dealer?